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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1950

No. 71

INTERNATIONAL WORKERS ORDER, INC., AND ARTHUR LOWNDES DRAYTON, PETITIONERS,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED MAY 11, 1950.

CERTIORARI GRANTED OCTOBER 9, 1950.

APPENDIX

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,308

INTERNATIONAL WORKERS ORDER, INC., and ARTHUR LOWNDES DRAYTON, *Appellants*,

v.

TOM C. CLARK, individually and as Attorney General of the United States, SETH W. RICHARDSON, individually and as Chairman of the Loyalty Review Board of the United States Civil Service Commission, GEORGE W. ALGER, JOHN HARLAN AMEN, HARRY A. BIGELOW, AARON J. BRUMBAUGH, JOHN KIRKLAND CLARK, HARRY COLMERY, TOM J. DAVIS, BURTON L. FRENCH, META GLASS, EARL HARRISON, PAUL M. HEBERG, GARRET HOAG, WILBUR LA ROE, JR., LAWRENCE T. LEE, ARTHUR W. MACMAHON, CHARLES E. MERRIAM, HENRY PARKMAN, JR., MURRAY SEASONGOOD, HARRY L. SHATTUCK, and MRS. HARPER SIBLEY, individually and as members of the Loyalty Review Board of the United States Civil Service Commission, *Appellees*.

Appeal from the United States District Court for the District of Columbia.

JOINT APPENDIX.

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2 Filed Feb 18 1949

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil No. 2348-48

Second Amended Complaint

Declaratory Judgment

Plaintiff's Address: International Workers Order, Inc., 80 Fifth Avenue, N. Y., N. Y.

INTERNATIONAL WORKERS ORDER, INC., *Plaintiff*,

v.

TOM C. CLARK, individually and as Attorney General of the United States, SETH W. RICHARDSON, individually and as Chairman of the Loyalty Review Board of the United States Civil Service Commission, GEORGE W. ALGER, JOHN HARLAN AMEN, HARRY A. BIGELOW, AARON J. BRUMBAUGH, JOHN KIRKLAND CLARK, HARRY COLMERY, TOM J. DAVIS, BURTON L. FRENCH, META GLASS, EARL HARRISON, PAUL M. HEBERT, GARRET HOAG, WILBUR LA ROE, JR., LAWRENCE T. LEE, ARTHUR W. MACMAHON, CHARLES E. MERRIAM, HENRY PARKMAN, JR., MURRAY SEASONGOOD, HARRY L. SHATTUCK and MRS. HARPER SIBLEY, individually and as members of the Loyalty Review Board of the United States Civil Service Commission, *Defendants*.

Plaintiff, by its attorneys, LEE PRESSMAN and ALLAN R. ROSENBERG, complaining of the defendants, respectfully shows to this Court and alleges:

I. JURISDICTIONAL ALLEGATIONS

1. This is a suit of a civil nature seeking a declaratory judgment, decree and injunction. This suit arises under the Constitution and laws of the United States and is brought to redress and prevent the deprivation, under color of alleged authority, of rights, privileges and immunities

secured under the Constitution and laws of the United States, including Article III and Amendments I, V, IX and X, of the Constitution, all as hereinafter more fully
3 appears.

2. The matter in controversy exceeds the value of three thousand dollars. This Court has jurisdiction under sections 11-301, 11-305 and 11-306 of the District of Columbia Code, and also under Title 28, chapters 85 and 151 of the United States Code.

II. The Purpose of This Action

1. On November 24, 1947, defendant Tom C. Clark, as Attorney General, in a letter to defendant Seth W. Richardson, as Chairman of the Loyalty Review Board of the Civil Service Commission, under color of Executive Order No. 9835, dated March 21, 1947, designated approximately 90 organizations, including plaintiff International Workers Order, Inc. (herein called the Order) as "subversive" organizations. Such designation is herein referred to as the "list". The inclusion of such plaintiff's name upon the list was without any notice or any opportunity to such plaintiff to be heard and was without authority in law or basis in fact and operated and is now operating to deprive plaintiff Order of rights and property without due process of law.

2. Defendants have published and circulated said list and have represented and caused it to be accepted as an authoritative, conclusive adjudication of the status, rights and character of plaintiff Order binding upon all other federal agencies and have used and threaten to use it to invade and destroy certain rights guaranteed under the Constitution and laws of the United States to plaintiff and to the members of plaintiff Order.

3. The purpose of this action is to restrain defendants from acting or purporting to act upon the basis of such purported adjudication of the status, rights and character of the Order, the inclusion of its name in such list of
4 alleged "subversive" organizations or its "designation" as such an organization; to restrain defen-

dants from declaring, circulating or publishing such plaintiff's name as that of a "subversive" organization or from discharging or instigating the discharge or the preferment of charges looking to the dismissal from government service of members of plaintiff Order because of their membership in such Order.

A. AS AND FOR A CAUSE OF ACTION IN BEHALF OF INTERNATIONAL WORKERS ORDER, INC. AGAINST DEFENDANTS CLARK, RICHARDSON, ALGER, AMEN, BIGELOW, BRUMBAUGH, CLARK, COLMERY, DAVIS, FRENCH, GLASS, HARRISON, HEBERT, HOAG, LA ROE, LEE, MacMAHON, MERRIAM, PARKMAN, SEASONGOOD, SHATTUCK AND SIBLEY.

III. The Parties.

1. Defendant Tom C. Clark is the Attorney General of the United States and is found within the District of Columbia.

2. Defendant Seth W. Richardson is the Chairman of the Loyalty Review Board of the Civil Service Commission, and defendants George W. Alger, John Harlan Amen, Harry A. Bigelow, Aaron J. Brumbaugh, John Kirkland Clark, Harry Colmery, Tom J. Davis, Burton L. French, Meta Glass, Earl Harrison, Paul M. Hebert, Garret Hoag, Wilbur La Roe, Jr., Lawrence T. Lee, Arthur W. MacMahon, Charles E. Merriam, Henry Parkman, Jr., Murray Seasongood, Harry L. Shattuck and Mrs. Harper Sibley are the other members of that Board. The Loyalty Review Board is located in the District of Columbia and each of the members thereof is to be found within the District of Columbia.

3. Plaintiff International Workers Order, Inc. is a fraternal benefit society, duly organized on March 28, 1930, as a corporation without capital stock under Article 7 of the Insurance Law of the State of New York, operating for the mutual benefit of its members and

their beneficiaries and not for profit. It is licensed and duly authorized to operate and operates in the District of Columbia and eighteen states. At the time of the promulgation of the list, the Order had approximately 185,000 members, including among them employees of the federal government and various states and municipalities.

4. The officers of the Order are General President, Rockwell Kent; General Vice-Presidents, John E. Middleton, Louise Thompson, Rubin Saltzman, Vito Marcantonio, Bronislav Wojkowski, General Secretary-Treasurer, Peter Shipka; General Recording Secretary, David Greene; General Trustees, Herman Seligson, Harry Lubeskoff, Dr. Luther Peck, Michael Tkach, Anthony Gerlach.

5. The purposes and objects for which the Order was formed are as set forth in its Certificate of Incorporation and Certificate of Amendment of Charter, and are as follows:

"To promote fraternal intercourse among the members; to assist its members in cases of sickness or disability and their families dependent upon them in need and distress resulting from such sickness and disability of such members; to carry on altruistic, educational, fraternal and recreational activities for the benefit of its members; to further benevolence and to allay poverty amongst those that are dependent upon its members for their maintenance and support by establishing a sick fund and also a beneficiary fund, from which, upon the death of any member in good standing, the beneficiary named in the membership certificate or policy issued to the deceased member shall draw an amount not exceeding the sum designated therein; the limit of death benefit payable under any individual membership certificate or policy shall not exceed three thousand dollars."

6. The Order operates on the lodge system and has a representative form of government as defined by Section 452 of the Insurance Law of the State of New York.

6 It has a constitution and by-laws, a copy of which is annexed hereto as Exhibit "A". Under the provisions of its Constitution and By-Laws, local lodges may be organized in any locality where there are at least fifteen acceptable candidates who apply for admission.

7. The Order consists of approximately 1860 lodges, located in the following States and the District of Columbia:

	Number of Lodges
California	77
Colorado	9
Connecticut	66
District of Columbia	4
Illinois	121
Indiana	35
Louisiana	1
Maryland	12
Massachusetts	69
Michigan	112
Minnesota	26
Montana	4
New Jersey	174
New York	355
Ohio	204
Pennsylvania	424
Rhode Island	12
Washington	14
West Virginia	51

Application for membership is made through its lodges. Applicants for membership are entitled to apply for up to $1,000. of life insurance without medical examination, if under forty-five years of age, and subject to medical examination if older. Additional insurance is available subject to medical examination. Sick benefits up to $10. per week are similarly available without medical examina-

tion and up to $15. per week, subject to such examination. The Order also offers disability and tuberculosis benefits. Each member receives an insurance policy covering the kind of insurance issued to him. The various options and schedule of premium payments are set forth in the
7 Constitution and By-laws of the Order.

8. Each members pays monthly dues. Such dues are made up of separate items covering dues for the various benefits which the member carries, and an item for general expense. The dues paid for benefits are segregated by the Order and placed in a separate benefit account, the accounts for the various benefits being segregated. The dues paid for expenses are segregated by the Order and placed in the general expense fund. The Order does not use any special fund placed in the mortuary, juvenile insurance, and sick benefit funds for any purpose other than payment of the benefits which those funds are set up to cover.

9. The Order functions as an inter-racial federation of national group societies to which its members belong according to their national origin or descent. The Order is the only inter-racial, fraternal benefit organization in the United States which forbids discrimination and segregation in its organization and which welcomes the Negro people into membership. The nationalities represented in its societies are Carpatho-Russian, Crotian, Czech, Finnish, Greek, Hungarian, Italian, Jewish, Polish, Romanian, Russian, Serbian, Slovak, Spanish and Ukranian. In addition, there are affiliated several hundred general lodges of varied national group composition.

IV. Plaintiff's Activities and Rights Affected.

1. In the furtherance of its fraternal, cultural, altruistic and patriotic objectives:

a) The Order affords to its members and their families, low cost, non-profit, sickness and death benefits and
8 has, during the approximately seventeen years of

its existence paid to its members in excess of eleven million dollars in benefits of which over five million dollars were for sick benefits and over five million dollars for death benefits. Life Insurance protection carried by its membership is in excess of one hundred twenty million dollars ($120,000,000.) and it has assets of approximately five million dollars ($5,000,000.) in a ratio of 145% to liabilities, or forty-five percent (45%) in excess of insurance law requirements. In addition, the Order, through its lodges, provides other aid and comfort to its members in case of distress.

b) The Order attempts to encourage the preservation of the cultural heritages and artistic values developed over the years and through the generations by the peoples of the different countries of the world and brought with them to the United States. The Order has accordingly fostered and encouraged various cultural and educational programs designated to preserve such cultures and values and to obtain their integration upon a basis of equality into American life.

c) The order sponsors and promotes citizenship and civic classes and the participation of its members in civic and patriotic activities, relief and welfare work, recreational, sports and athletic activities and related programs to improve the cultural, moral and physical status of its members, their families and the communities in which they live.

d) During World War II, the treasuries of the Order and its subordinate bodies were invested to the hilt for the purchase of war bonds and its membership was constantly urged and encouraged to invest its income similarly. Approximately thirty million dollars ($30,000,000.) worth of war bonds were purchased by members of the Order and the Order and its subordinates received numerous commendations, certificates and awards for its patriotic participation in such activity.

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e) Approximately ten thousand (10,000) members of the Order and fifteen thousand (15,000) husbands, sons and daughters of members of the Order served in the Armed Forces of the United States during World War II, not including service in the Merchant Marine. More than three hundred members of the Order were killed in action and hundreds more suffered wounds and received citations and medals for valor.

f) More than ten million dollars in cash and goods for war relief to American and Allied war relief agencies and for rehabilitation of occupied lands in Europe were raised and distributed under the auspices of the Order.

g) The Order sponsored donations of blood to the blood banks in which thousands of its members participated.

h) The Order actively participated in civilian defense and morale activities by issuing pamphlets, leaflets, instructions in English and foreign languages to obtain maximum involvement and unity for the successful prosecution of the war.

i) The Order organized knitting clubs from among its women members, which furnished over fifteen thousand woolen garments for the American and Allied Armies.

j) The Order presented hundreds of radios, victrolas, and millions of cigarettes to the Armed Forces.

k) The Order enlisted in the war against waste and engaged actively in the various scrap collection drives.

l) At all times since its formation and particularly during the war, it exerted and exerts every effort to build national unity amongst the different nationalities which make up the United States.

m) The Order has sponsored national baseball, soft-ball, boxing, bowling, soccer, ping-pong, swimming and other tournaments and has organized outings, hiking, track and field events, outdoor and indoor games and the like.

n) It has encouraged the development of groups in dramatics, choruses, social and interpretive dancing, orchestras, bands and photography.

o) It has actively supported, on a non-political, non-partisan basis, social security legislation for improved old age and retirement benefits, unemployment insurance, housing, price and rent control, health services and insurance, educational facilities, and the like and has sought to enhances the democratic values of the country by fighting discrimination, restrictions on civil rights and any undemocratic and liberty- and freedom-restricting proposals.

2. The Order is not subject to the instruction, direction or will of any individual or group of individuals, any organization or party, of whatsoever kind, nature or description, other than its own membership. Membership is open to "mentally sound and of good moral character from the age of sixteen up, regardless of nationality, religion, race, sex, color and political opinion." Power and authority rests with the membership, which functions through democratically elected officials, subject to the control and discipline of the membership and their duly elected representatives at stated national conventions.

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3. Adherence to the democratic processes of the Order prescribed in its Charter and Constitution and By-Laws is and at all times has been strictly supervised by the various Insurance Departments of the several states in which the Order carries on its business and activities. The Order files and since its formation has filed a comprehensive annual report in each of the states in which it is licensed to function. Periodic examinations of the Order have been made and are made by the New York State Insurance Department, as well as by other States in which it is licensed.

4. Prior to the action of the defendants herein complained of, the activities of the Order had, from time to time, in addition to the scrutiny and supervision of the Insurance Departments of the States in which it functions, been the subject of administrative and judicial proceedings.

As a result of such proceedings, held on notice to the Order, the purposes and activities of the order have been held to be free from any illegal or improper taint and not such as would bar members therein from the enjoyment of any rights, privileges or immunities. Among such decisions and rulings are the following:

a) An opinion by Gerard Reilly, Esq., as Solicitor of the Department of Labor, concurred in by the Commissioner of Immigration and Naturalization, dated March 7, 1939, a copy of which is annexed hereto as Exhibit "B", that "there was nothing in the record to indicate that membership in the International Workers Order was a ground for recommending to the courts against naturalization."

12 b) A ruling by the Commissioner of Immigration and Naturalization of the United States Department of Labor, dated March 21, 1938, a photostatic copy of which is attached as Exhibit "C", that the Service "would not be warranted in opposing the naturalization of an individual", because of membership in the Order.

c) Findings, ruling and an order made on March 4, 1939 by the Supreme Judicial Court of the Commonwealth of Massachusetts in an action entitled, "International Workers Order, Inc. vs. Commissioner of Insurance of the Commonwealth of Massachusetts", bearing Equity Number 63127, a copy of which is attached hereto as Exhibit "D", annulling the refusal of the Commissioner of Insurance to renew the license of the Order.

d) An opinion from the United States Civil Service Commission dated September 16, 1943, that "membership in, or activity in behalf of, the International Workers Order standing alone, has in no case been regarded by the Commission as rendering a person unsuitable for government employment". A copy of such opinion is annexed hereto as Exhibit "E".

e) A ruling of the Commissioner of Immigration and Naturalization Service of the Department of Justice, dated December 8, 1942, that the field offices of the Service were

instructed "not to object to the granting of any petition for naturalization solely on the ground that petitioner is, or was, a member of, or affiliated with the International Workers Order." A photostatic copy of this ruling is attached as Exhibit "F".

f) Findings of fact made in April, 1943 by the Board of Immigration Appeals of the United States De-
13 partment of Justice over the signature of its chairman, Honorable Thomas J. Finucane in the proceeding bearing case No. 56127/428 N. Y., as follows:

"That the International Workers Order does not write, circulate, distribute, or display, or cause to be written, circulated, distributed, printed, published, or displayed, or have in its possession, for the purpose of circulation, distribution, publication, issue or display, written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, or of all forms of law, or the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the Government of the United States or of any other organized government or the unlawful damage, injury, or destruction of property or sabotage, or that it ever has done any of those things."

On the basis of which findings the Board concluded:

"(1) That the International Workers Order is not an organization prescribed by Sections (d) and (e) of the Act of 1918, as amended.

"(2) That under the Act of October 16, 1918, as amended, the applicant is not excludable as an alien who is or has been a member of or affiliated with an organization which believes in, advises, and teaches the overthrow by force and violence of the Government of the United States."

g) Orders of the Honorable Clarence E. Galston, Judge of the United States District Court, Eastern District of New York on May 27, 1943, granting naturalization peti-

tions No. 339363; 343677, 342819 and 339371, notwithstanding membership in the Order.

h) Other orders, ruling and decisions of similar import.

5. As a result of its activities, the Order has merited and has received numerous commendations, citations certificates and awards from numerous officials in federal, state and municipal governments for outstanding patriotic voluntary service, for generosity, cooperation, for its constructive efforts and attainments, and its invaluable and splendid help and work and was well and favorably known in the United States as a patriotic fraternal, altruistic, benevolent and democratic organization, and as an exponent of the highest ideals of fraternalism and democracy, and had the friendship and support of numerous persons in the fields of public affairs, labor, the arts, sciences, and other professions and of other persons and organizations in the democratic movement of the United States and throughout the world.

6. The Order expended and expends annually substantial sums of money for the promotion of its activities and for the expansion and growth of its organization and the good name and repute which it held and enjoyed were and are necessary to its successful functioning.

7. The objectives and activities of the Order are an exercise of the rights of assembly, speech, press and petition and the Order is composed of persons who have assembled and associated together and are assembling and associating together for mutual betterment, protection and assistance and for the betterment and improvement of the communities and country in which they reside.

8. The purpose, objectives and activities of the Order are in no sense subversive. The Order is not an organization within the meaning of Part III, section 3 of Executive Order No. 9835, and it has not adopted a policy of advocating or approving the commission of acts of force or violence, or to deny other persons the rights under the Con-

stitution or as seeking to alter the form of govern-
15 ment by unconstitutional means, but on the contrary, the Order is opposed to the commission of acts of force or violence, fights against the denial of rights to any person, and is opposed to the altering of our form of government by any illegal or unconstitutional means. The Order is dedicated to the democratic ideals and traditions of the United States and the principles of freedom and equality embodied in the Constitution.

16 V. The Acts of Defendants Complained of.

1. On or about March 25, 1947, the President of the United States issued Executive Order No. 9835, published at page 1935 of volume 12 of the Federal Register.

2. Executive Order No. 9835 recites that it was issued by the President:

". . . by virtue of the authority vested in me by the Constitution and the statutes of the United States, including the Civil Service Act of 1883 (22 Stat. 403), as amended, and Section 9A of the act approved August 2, 1939 (18 U. S. C. 61 i), and as President and Chief Executive of the United States. . . ."

3. Said Executive Order provided, generally, for "loyalty investigations" of civilian employees in the Executive Branch of the Federal Government and of applicants for civil employment in the Executive Branch of the Federal Government.

4. Part III, section 1 of said Executive Order No. 9835 provided for the establishment of a Civil Service Commission Loyalty Review Board and pursuant thereto such a Board was established and the chairman and members thereof appointed by the President of the United States on or about November 8, 1947.

5. Part V, section 2(f) of said Executive Order No. 9835 specified the activities and associations of an applicant for employment with the Federal Government or of an employee of the Federal Government which may be consid-

ered in connection with the determination of disloyalty of the applicant or employee.

6. Part III, section 3 of said Executive Order No. 9835 further provided that the Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination designates as disloyal and that the Loyalty Review Board shall disseminate such information to all departments and agencies.

7. In a letter dated November 24, 1947, from the defendant Tom C. Clark to the defendant Seth W. Richardson, purportedly submitted pursuant to Part III, section 3 of Executive Order No. 9835, ninety organizations including the Order, were designated by the Department of Justice as falling within Part III, section 3 of said Executive Order.

8. The Order never received any notice or hearing with respect to the aforesaid designation.

9. On or about December 4, 1947, the defendant Seth W. Richardson sent the aforesaid letter together with the list of designated organizations to the local departments and agencies which assist in the administration of Executive Order No. 9835 and on or about the same time the aforesaid letter was released to and widely published by the public press.

10. Upon information and belief, the designation of the Order by the defendant Clark was intended by him to be in the nature of a binding and conclusive adjudication of the status, rights and character of the Order and was intended by him, under and with the color of authority, to affect the rights and property of the Order, and such designation has affected and does affect the rights and property of the Order and has caused and will continue to cause the Order substantial property and other injury as set forth in paragraph 12.

11. Upon information and belief, the dissemination of said designation by defendant Richardson and the other defendants constituting the Loyalty Review Board of the United States Civil Service Commission to other federal agencies and to the public is intended to convey to such other federal agencies the knowledge that an authoritative determination, binding and conclusive upon them, has been made in accordance with lawful authority and in consonance with due process of law, with respect to the status, rights and character of the Order and that such agencies are expected and required to be bound thereby, and is thereby intended to have and does have a direct and immediate effect upon the operation and function of the Order and upon its rights guaranteed against abridgement by the Constitution and results in a deprivation of its property without due process of law and has caused and will cause the Order substantial property and other injury.

12. Upon information and belief, as a result of the aforesaid acts of defendants:

a. On February 4, 1948, the Commissioner of Internal Revenue rescinded the ruling that the Order had a tax exempt status solely by reason of the purported and intended binding effect of the designation of the Order by defendant Clark.

b. On April 27, 1948, the Commission of Internal Revenue revoked the ruling made March 11, 1943 that the Relief and Rehabilitation Fund of the Order (known during the war as the Front Line Fighters Fund) was tax exempt solely by reason of the purported and intended binding effect of such designation by defendant Clark.

c. On April 27, 1948, the Commissioner of Internal Revenue revoked the ruling made December 14, 1942, that the National School and Cultural Committee of the Jewish Peoples Fraternal Order, of the Order, was a tax exempt organization solely by reason of the purported and in-

tended binding effect of such designation by defendant Clark.

d. The Order operates under the supervision of various Departments of Insurance in several states. Such departments are notably sensitive to allegations of misconduct or impropriety on the part of organizations subject to their jurisdiction. Solely as a result of defendant's acts
19 official in such departments, as well as other state officials, have been instigated and inspired to institute investigations and proceedings to rescind the various charters, licenses, franchises, privileges and authority possessed by the Order which are valuable and necessary to its function in the States. Such investigations and proceedings have subjected and will continue to subject the Order to substantial cost and expenses and to harassment and interference with its normal and proper operations and have jeopardized and will jeopardize the valuable property interests which it has in such charters, licenses, franchises, privileges and authority.

e. Many members, especially present and prospective civil servants, have resigned or withdrawn from membership in the Order.

f. Many potential members, especially present and prospective civil servants, have declined and will continue to decline to become members of the Order.

g. Members of the Order in government service have been subjected to charges of disloyalty and to dismissal because of their membership in the Order and in ensuing dismissal proceedings federal employing agencies have held and proceeded upon the basis that the designation of the Order constituted a determination in the nature of an adjudication concerning the status, rights and character of the Order which was binding and conclusive upon them.

h. Members of the Order who have pending petitions for naturalization have been denied naturalization or have had their petitions held in abeyance because of their membership in the Order solely because the Department of Justice,

headed by defendant Clark regards the designation as conclusive, final and not subject to re-opening or hearing in such proceedings.

i. Subordinate bodies of the Order have been hampered and will continue to be hampered in obtaining the use of private homes and in renting halls and similar places for the conduct of meetings, rallies, social and recreational affairs necessary for the proper functioning of the Order.

j. The Order and its members have been vilified and been subjected to criminal taint and the equivalent of criminal punishment by reason of the designation of the Order by name as subversive under the color of authority and have suffered and will continue to suffer public shame, disgrace, ridicule and obloquy, and economic coercion and injury.

l. Many employers in private industry, having contracts with the Army or the Navy, and other governmental agencies, have advised employees who are members of the Order or whose parents or relatives are members of the Order that because of such membership, such employees are undesirable, and such employees have been and are in the process of being discharged by such employers, said discharges having been made or instigated at the behest of the Army or Navy, and other governmental agencies.

m. The New York City Board of Education has revoked the license of the Jewish People's Fraternal Order, an affiliate of the Order, for the use of public school buildings in New York City to conduct classes for children out of school hours, the basis for such revocation being the designation and publication by the defendants of the "list" described in Paragraph II subsection 1, 2 and 3 and Paragraph V subsections 7, 8 and 9 hereof.

13. The designation of the Order as one of the proscribed organizations under the said Executive Order No. 9835 is without the slightest basis in truth or in fact and was made without notice or opportunity to be heard, without findings of fact or conclusions of law and without any prior or

accompanying statement or explanation of the basis
21 of the designation and defendants have caused all other federal agencies to accept such designation as a binding and conclusive adjudication of the status, character and rights of the Order and to deny to the Order and to its members any right or opportunity to be heard on the true status and character of the Order, resulting in a deprivation of rights and property of the Order without any opportunity at any time or under any circumstances to be heard.

14. The actions of defendants deny, impair and previously restrain the Order and its members from accomplishing their lawful and proper objectives in assembling and associating together and in exercising the rights of speech, press and petition while so assembled, guaranteed against invasion under the First Amendment and deprive the Order and its members of the benefits and privileges of mutual association and assembly and of the mutual obligations heretofore assumed by its members in such association and assembly as guaranteed by the First Amendment.

15. The aforesaid actions taken by defendants were unauthorized and without warrant in law and amount to a deprivation of the rights of the Order and of its members in violation of the Constitution of the United States.

16. Section 9A of the Hatch Act enacted August 2, 1939 (53 Stat. 1148, 18 U.S.C.A. 61 i) as construed and applied herein by Executive Order No. 9835 is unconstitutional and void for the following reasons:

a. It is repugnant to the Constitution of the United States as a deprivation of freedom of speech, of the press, and of assembly and association of the Order and its members in violation of the First Amendment of the United States Constitution.

b. It is repugnant to the Constitution of the United States as a deprivation of liberty and property of the Order and of its members without due process of law in

violation of the Fifth Amendment of the United States Constitution.

22 c. It is repugnant to the Constitution of the United States as a deprivation of the fundamental rights of the Order and of its members reserved to the people of the United States by the Ninth and Tenth Amendments of the United States Constitution.

17. Executive Order No. 9835 on its face and as construed and applied herein by defendants exceeds the powers vested in the President by the United States Constitution and is null and void for the following reasons:

a. It is repugnant to the Constitution of the United States as a deprivation of freedom of speech, of the press, and of assembly and association of the Order and its members in violation of the First Amendment and the Fifth Amendment of the United States Constitution.

b. It is repugnant to the Constitution of the United States as a deprivation of liberty and property of the Order and its members without due process of law in violation of the Fifth Amendment of the United States Constitution.

c. It is repugnant to the Constitution of the United States as a deprivation of the fundamental rights of the Order and its members reserved to the people of the United States by the Ninth and Tenth Amendment of the United States Constitution.

d. It is repugnant to Article III of the Constitution which vests the judicial power of the United States in the courts.

18. There exists between plaintiff and the defendants herein an actual controversy, and plaintiff has instituted this action for the purpose, among others, of having Section 9A of the Hatch Act as construed and applied by Executive Order No. 9835 and said Executive Order No. 9835 on its face as construed and applied by defendants declared unconstitutional as hereinbefore more particularly set forth.

19. A delay in ascertaining and determining the rights of the Order and of its members will result in further serious and irreparable loss and damage to it, and this loss and damage are and will be irremedial unless relief is granted by this Court. Plaintiff has no remedy by administrative review or appeal for the reason that defendants refuse to accord to it any hearing or to indicate to it any basis or reason for the designation and for the further reason that other federal agencies similarly refuse any hearing to the Order on the ground that they are bound and concluded by the designation. There is no other remedy afforded by law or statute against the illegal acts and conduct of defendants, save the equity powers of this Court, and unless the relief prayed for is granted, plaintiff will suffer irreparable loss and damage.

20. By reason of the premises the Order is entitled to relief against the defendants under the Federal Declaratory Judgment Act of June 14, 1934, Title 28, U. S. Code, Chapter 151, and under the Constitution of the United States.

21. The damage to the Order above described will continue unless and until the defendants are enjoined from publicizing and sending to departments and agencies in the Executive Branch of the Federal Government the name of plaintiff as a designated organization with the concomitant connotation that such designation is a binding and conclusive determination of the status, rights and character of the Order, and are directed to remove plaintiff's name from the list already circulated and issued, and are directed further to make known this action in the same manner in which they made known the inclusion of plaintiff's name on the above mentioned list, and are directed further to take no action which may be based upon the inclusion of plaintiff's name in the aforesaid list.

22. Plaintiff has no adequate remedy at law.

23. Greater injury will be caused to plaintiff by the denial of the relief here prayed for than will be caused to defendants by the granting thereof.

24. WHEREFORE, plaintiff prays judgment:

1. That Section 9A of the Hatch Act as construed and applied by Executive Order No. 9835 and by defendants is unconstitutional;

2. That Executive Order No. 9835 on its face and as construed and applied by defendants is unconstitutional;

3. That defendants and their officers, agents, and employees be enjoined from designating, circulating or publicizing the name of International Workers Order, Inc. as a designated organization; and that defendants and their officers, agents and employees be directed to remove the name of International Workers Order, Inc. from the list of designated organizations already circulated, issued and published, and to make a public statement of this removal; and that defendants and their officers, agents, and employees be directed to take no action which may be based upon the inclusion of such plaintiff's name in the list of designated organizations;

4. That defendants, their officers, agents and employees be enjoined from dismissing or instigating the dismissal or the preferment of charges for the dismissal of members of the Order from the federal civil service because of membership in the International Workers Order, Inc.

5. For such other and further relief as this Court may deem proper.

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February 17, 1949

Constitution
and
By-Laws

OF THE

INTERNATIONAL WORKERS ORDER

incorporated

In Effect January 1, 1948

CONSTITUTION

AND

BY-LAWS

of the

INTERNATIONAL WORKERS ORDER, Inc.

●

As Amended by the Seventh General Convention
held in New York, N. Y.
June 16-18, 1947

IN EFFECT JANUARY 1, 1948

GENERAL DECLARATION
of
PRINCIPLES

The International Workers Order is a multinational federation of peoples' fraternal benefit societies. Its principles and practices embody the experiences and progressive traditions of American fraternalism. It is organized and functions as a federated Order of united nationality group societies.

The IWO provides sick, disability and death benefits. It organizes for its members medical aid and other forms of fraternal services. It pledges aid and comfort to its members in case of need.

The ranks of the International Workers Order and its societies are open to all regardless of sex, nationality, race, color, creed or political affiliation.

The cultural heritage of every one of the many national and racial groups which make up the American people has contributed to and enriched the life and traditions of our country. Through the fraternal life of its lodges our Order endeavors to make these cultural traditions a

source of education, recreation and happiness for all of its members and their families.

The fraternal functions and services of the component nationality group societies of the Order are dedicated to the needs and cultural traditions of their people. They are encouraged to join or to cooperate with other organizations of their nationality group communities in common endeavors for the furthering of their people's interests. By these means the societies shall help to further and broaden the contributions of their nationality groups to American civic endeavors, and to have these groups as equals integrated in the democratic way of life of the American nation.

By these fraternal and civic means the Order strives to contribute to the unity and equality of the American people and to strengthen their fighting power against foes of American democracy from within and without.

To promote this program, the Order and its component societies undertake to organize adults, young people and children. They help to promote sports life, musical, dramatic and educational groups. They encourage the development of social life among their members in the lodges.

The fraternal functions of the International Workers Order aim primarily to help the economically insecure. For them, fraternal benefits

are an indispensable emergency aid. Likewise, adequate social security legislation is necessary to protect the sick, the disabled, the unemployed and their families. Hence, the International Workers Order and its component societies pledge to encourage trade union organization and activities among their members, and cooperate with the labor movement in their endeavors for a better life. They also accept the duty of undertaking civic efforts in favor of legislation in the interests of the people.

As an American organization the International Workers Order accepts responsibility for the defense of the democratic institutions of our country. It recognizes that the best defense of the democratic rights of the people is the effective discharge of their duties of citizenship. The IWO thus encourages its members and lodges to participate actively in the civic endeavors of their communities.

Everywhere and at all times the International Workers Order shall make itself a defender of the liberties of the people and a force for the improvement of social service by the nation to all of its people. Thus the Order endeavors to contribute to the development of a better America.

CONSTITUTION *and* BY-LAWS

of the

INTERNATIONAL WORKERS ORDER, INC.

NAME

1. The name of this organization is the International Workers Order, Inc.

JURISDICTION

2. The International Workers Order, Inc. was organized in April 1930, pursuant to Article 7 of the Insurance Law of the State of New York entitled, "Fraternal Benefit Societies." It is a fraternal benefit society organized solely for the benefit of its members and their beneficiaries, and not for profit. It is operated on a lodge system, and has a representative form of government. It obligates itself for payment of life insurance and other benefits in accordance with its Constitution and By-Laws. It carries on altruistic, educational, fraternal, and recreational activities for the benefit of its members. It endeavors to secure licenses to carry on its business in the various states of the United States of America, and shall have, possess, and exercise all rights

and privileges accorded to fraternal benefit societies.

GENERAL CONVENTION

3. The General Convention is the highest authority of the Order and has complete and absolute jurisdiction and power to determine all questions involving the affairs of the Order.

Election of General Council

4. The General Convention shall elect forty-seven (47) members, who, in addition to the elected General Officers, shall constitute the General Council. These forty-seven (47) members shall be elected on the basis of approximate proportionate representation of all nationality societies and other subdivisions of the Order, each of which shall be entitled to at least one representative on the General Council.

Election of Officers

5. The General Convention shall elect the following officers who shall be members of the General Council with voice and vote:

A General President
Five (5) General Vice-Presidents
A General Secretary-Treasurer
A General Recording Secretary
A General Attorney
Five (5) General Trustees

Permanent employees of the Order are not eligible for election as Trustees.

6. Any member of the Order who has been a member in good standing for at least one year prior to the date of the holding of the General Convention shall be eligible for election as an officer or member of the General Council.

Appeals

7. The General Convention shall have the right and authority to take up and dispose of all appeals from the decisions of the General Council.

Authority to Fix Rates

8. The General Convention shall have the right and authority to fix the amount and system of payments required for members of the Order, which payments, however, shall not be below the minimum standards required by the Insurance Laws.

Voting at General Convention

9. Every delegate to a General Convention, or alternate replacing such delegate, shall be entitled to only one vote at the General Convention. Voting by proxy is not permitted.

10. A majority of the delegates entitled to vote at the General Convention shall be made up of members of the Order other than those who have

received regular salaries as full-time employees of the Order during any period of the twelve months immediately preceding the Convention.

REGULAR CONVENTION

Time and Place

11. The regular General Convention shall convene once in every four (4) calendar years.

The General Council shall fix the exact date and place of the Convention, and at least six (6) months prior to said date shall advise the nationality societies and other subdivisions of the Order thereof.

Election of Delegates to General Convention

12. The General Convention shall consist of delegates elected at Conventions of nationality societies and other subdivisions of the Order.

The basis of representation shall be one (1) delegate for each six hundred (600) or major fraction thereof of the members of the respective nationality societies or other subdivisions of the Order.

Nationality Society Conventions

13. Conventions of nationality societies and other subdivisions of the Order shall be held in the same city as the General Convention and shall immediately precede it.

The National Committee of each society or other subdivision of the Order shall fix the exact date of its respective national convention and advise every lodge of the society of same at least five (5) months prior to that date.

Election to the National Conventions

14. Nationality society conventions shall consist of delegates elected by the membership of the respective societies either at meetings of the lodges or at conferences of representatives of the lodges elected at lodge meetings, or by referendum ballot; the exact mode of election in each nationality society shall be determined by its respective National Committee.

Delegates to the conventions of other subdivisions of the Order shall be elected either at meetings of respective lodges, or at conferences of representatives thereof elected at special lodge meetings, or by referendum ballot; the exact mode of election shall be determined by the General Council.

The basis of representation to the Conventions of the nationality societies or other subdivisions of the Order shall be one (1) delegate for each two hundred (200) members.

Method of Voting for Delegates to National or General Convention

15. The required number of candidates receiving the highest number of votes shall be deemed

elected as delegates, and the candidates with the next highest number of votes shall be deemed elected as alternates.

Eligibility for Delegate

16. Any member of the Order who is in good standing at the time of his nomination is eligible for nomination and election as delegate either to the General Convention of the Order, to the national convention of the society, or to the conferences or conventions of other subdivisions of the Order. He need not be a member of the lodge that nominates or elects him.

Membership Basis for Election

17. All membership figures used as the basis for election shall be those of the adult insurance members on the first day of the month preceding the issuance of the call for the General Convention by the General Council as promulgated by the latter.

Non-Voting Delegates

18. All members of the General Council shall be delegates to the General Convention with voice but no vote.

The General Council shall have the right, in its discretion, to invite fraternal delegates to the Convention, such delegates to have voice but no vote.

The total number of all non-voting delegates

as provided in these By-Laws shall not exceed one-third of the duly elected delegates entitled to vote.

Expense Allowance of Delegates

19. Every voting or non-voting delegate or alternate replacing a delegate to the General Convention, the nationality society convention, or conventions of other subdivisions of the Order, shall receive from the General Council a daily expense allowance as fixed by the latter at the time it issues the call for the General Convention.

The expense allowance shall be payable for the number of days the respective convention is in session and the days needed for travel to and from the convention city. The delegates shall also be entitled to transportation costs to and from, and sleeping accomodations in, the city of the convention, unless residing therein.

SPECIAL CONVENTIONS

20. A special General Convention of the Order shall be called: (a) whenever the General Council so decides by at least a two-thirds vote of its members present and voting; (b) when at least twenty (20) lodges from five (5) different Nationality societies or other subdivisions of the Order demand same in writing, provided this

demand is approved by a majority vote in a referendum of the membership of the Order.

21. The demand of lodges for a Special Convention, as set forth in the previous section, subdivision (b), must be submitted for a referendum vote by the General Council within thirty days after same has been received by it. Special General Conventions approved by a majority vote in a referendum must be called by the General Council not later than sixty (60) days after the date of approval.

22. No Special General Convention shall be held within six months prior or subsequent to a regular General Convention.

23. Subject to the limitations set forth in Section 21, the General Council shall have full power to decide the time, place and duration of the Special General Convention, and shall furnish this information to all subdivisions of the Order not later than thirty days before the date set for the opening of such Convention.

24. Delegates to the Special General Convention shall be those who were delegates to the regular General Convention next preceding the Special Convention. If any regular delegate shall be unable to attend, the proper alternate originally elected shall replace him.

25. All By-Laws and rules applying to powers, duties, expense allowance, sleeping and traveling accommodations of delegates to regular Gen-

eral Conventions shall likewise apply to Special General Conventions.

GENERAL COUNCIL

Powers and Duties

26. The General Council elected by the General Convention shall, within the limits of this Constitution and By-laws, have the right, power, authority and duty of carrying on all the business of the Order between General Conventions.

The General Council shall have the rights, powers and duties of directors of a fraternal benefit society accorded by the insurance laws.

The General Council shall elect an Executive Secretary.

The General Council shall meet at least twice a year. In addition to its regular meetings special meetings of the General Council shall be called whenever the majority thereof so demands in writing. Notice of meetings of the General Council shall be given to all of its members at least ten (10) days in advance by mail.

27. Twenty members of the General Council shall constitute a quorum.

28. The General Council shall have the authority and power to decide upon and change the form of benefit certificates, membership certificates, application blanks, seals, or any other blanks or forms used to conduct the business of the Order or of its lodges.

29. The General Council shall have the right to remove for cause by vote of two-thirds (2/3) of its members present and voting any General officer or member of the General Council. Such action may be taken only at a meeting of the General Council and may not be referred to any of its sub-committees.

30. The General Council shall entertain and pass upon all appeals of members against decisions of various lodges, committees, or officers of the Order.

31. The General Council has the right to call special meetings of the lodges, to order new elections of lodge officials and to conduct the same; it has the right to demand of any lodge official or member that he submit to the General Council or its representative for auditing all books, papers, records, vouchers or receipts of the lodge which may be in the possession of said official or member, or of which he may have control, and if compliance with such demand is refused, the General Council has full power to take possession of these materials and to otherwise enforce its demands.

32. In case of proposal of merger with or transfer of membership or funds of any other fraternal organization to the Order, the General Council shall, by written contract, set forth in full the terms and conditions of the merger or transfer which shall be in accordance with the

provisions of the Insurance Law of the State of New York and such other states as are concerned in connection therewith. Any such merger or transfer can go into effect only if, after proper approval by the General Council, it is approved by a referendum vote of the Order, and shall become effective only after approval by the proper Insurance authorities.

33. The General Council shall employ a General Medical Examiner.

34. The General Council, with the approval of the Actuary and subject to the Insurance Laws of the State of New York and other states where the Order is licensed, shall have the right and power to distribute surpluses, or any part thereof, to its members on an equitable basis, provided that no such distribution shall be made which shall reduce the remaining surpluses below five dollars per thousand of its life insurance in force at the last date of valuation.

Whenever the dues charged for the mortuary or sick benefit insurance shall fail to cover the payments of corresponding benefits granted by the Constitution and By-Laws, in accordance with the various options therein set forth, additional contributions shall be collected from each member by direction of the General Council to meet his proportional share of such deficiency. In case the annual valuation of the membership certificates shall fall below the 100% minimum

required by law, then an additional contribution shall be collected to meet such deficiency. Additional contributions shall likewise be collected from the membership by direction of the General Council whenever the latter deems it necessary and proper so to do in order to effectuate the carrying on of the insurance business of the Order.

The General Council shall have the power and authority to levy an appropriate assessment on the members of the Order, in a fixed amount and for a stated period, for the benefit of the Expense Fund of the Order whenever, in its judgment, such additional contribution is necessary to maintain the financial integrity or effective operation of such Fund.

Vacancies in General Council

35. Whenever any member of the General Council fails to attend three consecutive meetings of the General Council or of any sub-committee to which he has been assigned, without excuse satisfactory to the General Council, his office as a member of the General Council may by the latter be declared vacant and thereupon the proper alternate shall take his place.

Committees

36. The General Council shall elect from among its members an Executive Committee of twenty-three (23) members and may create as many

other permanent or temporary sub-committees and elect such officials and assistants to officers as it may deem necessary.

37. One-half of the number of members of any sub-committee shall constitute a quorum of such committee.

Executive Committee

38. The Executive Committee, subject to the supervision of the General Council, shall have power and authority to do all things necessary to carry out the policies of the General Council and shall supervise all such actions. It shall organize the semi-annual regular meetings of the General Council and shall call special meetings of that body whenever it finds it advisable or whenever the majority of the members of the Council so demand in writing.

POWERS AND DUTIES OF OFFICERS

General President

39. The General President shall preside at all meetings of the General Convention and at all regular and special meetings of the General Council; he shall sign, together with the General Secretary-Treasurer, all charters and other documents requiring his signature; in general he shall perform all duties incidental to his office as well as those required of him by the Constitu-

tion and By-Laws, subject to the decisions of the General Council.

General Vice Presidents

40. The General Vice Presidents, subject to the decisions of the General Council, shall perform such duties as are incidental to their office, and any of their number may be designated by the General Council to perform the duties of the General President in the absence of the latter.

General Secretary-Treasurer

41. The General Secretary-Treasurer shall be the chief administrator of the General Office. He shall receive all monies and invest same in accordance with the decision of the General Council; he shall be responsible for the regular keeping of books and accounts, as well as for the preparation, compilation and delivery of all reports and documents required by various insurance laws, and all other official documents and reports of the Order and shall sign same. Together with other officers designated by the General Council, he shall be responsible for the signing of checks and warrants for the withdrawal of monies and for the administration and investment of the reserves of the Order.

On checks and warrants for withdrawal of money from the Sick Benefit Fund, the General

Secretary-Treasurer may affix his signature by facsimile.

If and when the volume of his work shall so require, the General Council at his request may assign some of his duties, including the signing of checks and warrants for withdrawal of money, to some other officers or assistants, who shall perform such duties under the supervision and direction of the General Secretary-Treasurer.

The General Secretary-Treasurer shall carry out all duties assigned to him by the General Council and shall be subject to its decisions.

General Recording Secretary

42. The General Recording Secretary shall keep the minutes of the meetings of the General Council and perform the duties of his office subject to the decisions of the General Council.

General Attorney

43. The General Attorney shall render all legal services required by the Order subject to the direction of the General Council.

General Trustees

44. The General Trustees shall examine all financial transactions of the Order and shall have access to all records thereof. They shall receive the financial statements prepared by the Order. They are authorized to employ, at the cost of the General Council but subject to the prior approval of the latter as to the limit of said cost, an

auditor for the purpose of assisting them in their examinations. They shall meet at least once in six months preceding the meeting of the General Council and submit their findings and recommendations to the General Council.

In the event that any Trustee becomes a permanent employee of the Order, then his office as Trustee shall be deemed vacant, and he shall be replaced by the General Council.

General Medical Examiner

45. The General Medical Examiner shall have the power and authority to approve or reject applications submitted to him for consideration. He may in his discretion decrease the amount of insurance or other benefits applied for. He shall be consulted on the appointment of local medical examiners before such appointments shall be deemed effective.

Bonding

46. The General President and the General Secretary-Treasurer shall be bonded at the expense of the Order in bond of not less than five thousand dollars ($5,000.00) each.

Tenure of Office

47. All officers and members of the General Council shall remain in office until their successors are duly elected and qualified.

Vacancies in General Offices

48. Vacancies in the positions of General Officers shall be filled by the General Council and officers so elected shall hold office until the next regular or special General Convention following their election.

GENERAL OFFICE

49. The General Office of the Order is hereby designated as the place where the General business of the Order is transacted and where its books, records and correspondence are kept and maintained.

The General Office shall be located in New York City in a place designated by the General Council.

NATIONALITY SOCIETIES

50. Lodges whose members in the main are of a common nationality group origin, shall organize themselves into appropriately named societies of the Order. Such societies shall have full autonomy in conducting the cultural, social and fraternal functions of the Order among their respective nationality groups. These societies shall adopt by-laws setting forth their purposes and organizational structure, including provisions for holding of conventions and election of officers; such by-laws, however, must be consistent with the Constitution and By-Laws of the Order.

The General Council shall have the right to assign various lodges to appropriate nationality societies or other subdivisions, or transfer, as conditions reasonably warrant, a lodge from one nationality society or subdivision of the Order to another.

SUBDIVISIONS

51. Lodges not attached to any society (known as "General Lodges") may be organized in one or more subdivisions, if and when the General Council deems it necessary.

LOCAL COMMITTEES

52. Lodges of the Order in any locality (state, district or city) may, with the approval of the General Council, organize General Local Committees. All such Local Committees shall adopt by-laws governing their activities and organizational structure, including provisions for the election of officers, which said by-laws must be consistent with the Constitution and By-Laws of the Order. Such Local Committees, under the supervision and direction of the General Council, may carry on various activities for the benefit of the membership, the lodges in their locality, and of the Order.

53. Local Committees or any other subordinate committees or bodies shall have no right, authority or power to bind the General Council or the

General Office of the Order in any matters whatsoever unless specifically authorized by the General Council so to do; in no event, however, may they subject the General Council or General Office of the Order to any contractual or financial obligations.

LODGES

New Lodges

54. New Lodges may be organized by the General Council upon application of the respective National Committee in any locality where there are at least fifteen (15) acceptable applicants for membership in the Order. The General Council shall issue to new lodges charters signed by the General Officers and countersigned by the officers of the respective nationality society.

Lodge Meetings

55. The lodges of the Order shall hold at least one regular meeting a month.

56. Seven (7) good-standing members of the lodge present at the time and place designated for the regular meeting shall constitute a quorum.

57. The General Council may delegate to any member of the Order the power to attend and take charge of the meeting of a lodge whenever it considers such a step necessary in the interest of the Order. A member thus delegated shall present proper credentials.

Lodge Officers

58. Every lodge shall elect the following officers:

President
Vice-President
Financial Secretary
Recording Secretary
Treasurer
Benefit Director
Educational Director
Membership Director

Lodges may combine the functions of two offices into one office.

These officers together with as many other members as the lodge may designate shall constitute the Executive Committee of the lodge.

The Financial Secretary and Treasurer shall be good standing members of the Order at least six (6) months prior to their election to office. Newly organized lodges are exempt from this provision.

59. Every lodge shall elect an Auditing Committee (trustees) which shall examine the books and records of the lodge at least every three (3) months, and report its findings in writing to the lodge and to the General Office.

Bonding of Officers

60. Every lodge must bond its financial officers against loss by misappropriation of funds with

the Bonding Fund, maintained by the General Office, and shall pay the bonding charge fixed for this service by the General Council.

Lodge Dues

61. Each lodge shall have the right, besides the dues it collects for the General Office, to levy on its members such local dues as it may determine are necessary to cover the expenses of maintaining the lodge. Such local dues shall be binding on all members and payable monthly.

Duties of Lodges

62. The lodge shall see to it that all moneys collected for the General Office shall be kept separate and apart from moneys collected for other purposes of the lodge. Funds collected for the General Office shall not be used for any purpose other than to pay the bills owed to the General Office.

63. All moneys due to the General Office for dues, assessments and supplies shall be due and payable on the 25th of each month.

64. Neither the lodge nor any officer of a lodge has the right to bind the Order in any matter whatsoever or to waive any provisions of this Constitution and By-Laws or any rules, regulations or decisions of the General Council or to subject the Order to any contract or financial

obligation of whatsoever kind, nature or description.

Dissolution of Lodge

65. A lodge may be dissolved by the General Council and its members transferred to other lodges of the Order, or be placed in the status of members-at-large, unattached to any lodge, if:

a. The membership of the lodge decreases to less than ten;
b. Its actions are inconsistent with the Constitution, By-Laws, principles, rules, regulations or interests of the Order as determined by the General Council.

66. If a lodge votes to dissolve or if it is dissolved by the order of the General Council, then all its property, funds, documents, supplies, seals, records, etc., of whatsoever kind, nature or description, all of which are hereby declared to be the property of the General Office of the I.W.O., shall be immediately forwarded to the General Secretary-Treasurer.

MEMBERSHIP

67. Any person mentally sound and of good moral character from the age of sixteen (16) years up, regardless of nationality, religion, race, sex, color or political opinion is eligible for membership in the Order, either as a social member or as an insurance member.

Social Members

68. A social member may be admitted to the Order upon the approval of the lodge by filing an application with the General Office.

The general dues of social members shall be $1.00 a year. These dues shall be payable upon application and thereafter yearly in advance, and shall cover a year's subscription to the official organ of the Order.

Two expiration dates for the renewal of social membership are hereby established:

a) Membership of those who join during the first half of the current calendar year (January to June inclusive) shall expire and shall be renewed January 1 following the entrance date.

b) Membership of those who join during the second half of the current calend. year (July to December inclusive) shall expire and shall be renewed on July 1 following the entrance date.

The dues for the renewal of social membership shall be payable for one year in advance on January 1 or July 1 in accordance with the expiration date. Those social members who fail to remit their renewal dues within three months of their expiration date shall be automatically dropped from the rolls of the Order.

69. Social members shall participate in all activities of the lodge and shall be eligible for election to all offices of the lodges and of the

Order except the offices of President, Secretary and Treasurer, which latter positions are open to insurance members only.

Social members shall not be entitled to any insurance benefits whatsoever, and shall have no voice, or vote in the insurance affairs of the Order.

70. Social members may become insurance members subject to all regulations governing the acceptance of new insurance members.

INSURANCE MEMBERS

Amounts of Benefits

71. Applicants for insurance membership between the ages for sixteen (16) years and sixty (60) years may be admitted to membership for the following benefits:

16 to 45 years next birthday: $250, $500, $1,000, $2,000, $3,000, or $5,000 life insurance and $4, $6, $8, $10, or $15 weekly sick benefit.

46 to 50 years next birthday: Maximum of $3,000 life insurance but no sick benefit.

51 to 60 years next birthday: Maximum of $1,000 life insurance but no sick benefit.

The General Council has the right to increase the limits of benefits granted to applicants up to the age of 60 years if they join the Order as part of an already existing organization of not less than 25 in number.

Within the foregoing limits, these benefits may

be granted in such amounts as the General Council in its discretion may decide.

72. In granting sick benefits the General Council may demand a waiver of benefits for any specific condition, and no sick benefit shall be granted until such waiver signed by applicant has been received.

Initiation Fees

73. Every adult applicant for insurance membership must pay an initiation fee of $1.00 (one dollar).

74. All initiation fees must be collected in advance and sent to the General Office together with the applications. In case the applicant is rejected or the benefits requested by the applicant are reduced and not accepted by the applicant, the initiation fee shall be refunded.

The income from the initiation fees shall be deposited in the Expense Fund of the Order.

Regulations for Applicants

75. All applicants for membership must comply with the following rules and regulations:

a. Be proposed for membership at a lodge meeting by a member thereof;

b. Fill out, sign and submit a membership application on the form provided by the Order, and make true and correct answers to the questions therein;

c. Pledge to comply with and be bound by the principles, Constitution and by-laws, rules and regulations of the Order.

76. All applicants for insurance membership who are over 45 years of age, or applicants for life insurance in an amount over $1,000, as well as applicants for sick benefit of $15 per week, or in any case where the General Council may so require, must pass, at their own expense, a health examination by a legally qualified physician approved by the General Medical Examiner.

77. No member of a private police force and no professional strikebreaker shall be accepted as a member of the Order.

78. An applicant rejected by a local medical examiner or by the General Medical Examiner may re-apply for membership after the expiration of six months from the date of examination.

79. An applicant may be rejected as a member when a majority of the lodge members present and voting reject his application at the meeting where he is proposed for membership.

80. Regardless of whether the applicant is approved or rejected by the local medical examiner, or at the lodge meeting, the application shall nevertheless be completed and sent to the General Office.

81. The General Council may reject any and all applications for membership in the Order for any reason satisfactory to it.

Initiation of Members

82. After receiving from the General Office notice of approval of an applicant, the lodge secretary shall immediately notify the applicant by mail to appear at the next meeting of the lodge for initiation. At the meeting the chairman shall acquaint the applicant with the principles of the Order and his duties as a member. Each applicant shall pledge to uphold the principles of the Order and faithfully carry out his duties as a member before he shall be deemed to be a member of the Order. These proceedings shall be in accordance with the ritual of the Order. No person shall be considered a member and entitled to benefits prior to his initiation and payment of first month's dues.

Entrance Date

83. The membership of all approved applicants shall begin with the date of issue of the membership certificate. This date shall be known as the date of joining or entrance date.

Cancellation of Membership

84. The General Council in its discretion may cancel any membership within three months after entrance date, and in such event the initiation fee and other dues paid shall be refunded.

85. Applicants for membership shall answer truthfully all questions listed on the application

for membership or any additional questions put to them by the examining physician; if it should appear that the applicant has made fraudulent statements in his application, he shall not be entitled to receive any benefits from the Order and shall be subject to expulsion at any time subsequent to the discovery of these fraudulent statements. All statements made by the applicant shall, in the absence of fraud, be deemed representations and not warranties.

86. If the applicant does not appear for initiation within three months after the entrance date, or in the event that the applicant becomes ill or disabled prior to his initiation and payment of at least one month's dues, he may be required to reapply for membership, and in such case he shall not be recognized as a member of the Order until the new application is approved by the General Medical Examiner and until he has been properly initiated.

Rights and Duties

87. Each member shall, at the time of his initiation, pay to his lodge at least one month's dues. He shall thereafter continue and be liable to pay his dues and assessments as well as lodge dues in advance, as required by the Constitution and By-Laws, until and including the month in which his membership may be terminated by

the General Council, the increased benefits become payable only three months after the increased dues have been charged, and will be subject to all provisions governing payment of benefits to new members.

Membership Certificates

93. Membership certificates shall be issued to each member, setting forth the amount of insurance which has been granted to him.

Beneficiaries

94. The membership certificate issued to the member shall contain the name of the beneficiary. As beneficiary a member may designate: wife, husband, relative by blood, marriage or adoption, betrothed or persons dependent upon the member; a member may also provide the amount of funeral expenses to be paid from his mortuary benefit.

Change of Beneficiary

95. If a member desires to change the beneficiary previously named, he must request this change in writing. The request must either be attested by witnesses or be notarized. It must be forwarded to the General Office, and shall be effective only from and after the date of endorsement of the change on the membership certificate by the General Office. Such change shall be

deemed effective only if the member is still alive on the date when the request for the change was received by the General Office.

Options and Payments

96. The following options are hereby established:

1. Option AM. This option carries life insurance only and does not entitle the member to any other benefits.

2. Option A. This option is given only to wives of members and carries no sick benefit; members in this option are entitled to consumption and dismemberment benefits only up to the age of 65. These benefits are payable as provided for in Sections 148 to 157 inclusive.

3. Option AY. This option is granted only to applicants between the ages of 16 to 25 years. All such members, upon passing their twenty-fifth year, shall be transferred to Option AM and their dues adjusted to adult rates. Option AY carries consumption and dismemberment benefits as provided for in Section 148 to 157 inclusive. Members in this option are not entitled to any other sick benefits. Student members up to the age of twenty-five (25) years are confined to this option.

4. Option B. This option carries four dollars ($4) weekly sick benefit, consumption and dismemberment benefits.

5. Option C. This option carries six dollars ($6) weekly sick benefit, consumption and dismemberment benefits.

6. Option D. This option carries eight dollars ($8) weekly sick benefit, consumption and dismemberment benefits.

7. Option E. This option carries ten dollars ($10) weekly sick benefit, consumption and dismemberment benefits.

8. Option H. This option carries fifteen dollars ($15) weekly sick benefit, consumption and dismemberment benefits.

97. Option B, C, D, E and H are granted only to members up to 45 years of age next birthday.

98. Members in option B, C, D, E and H upon reaching the age of sixty-five (65) are no longer entitled to sick benefit, TB or dismemberment benefits and shall be transferred to option AM. Members' wives carrying sick benefit options, upon reaching the age of 65, shall be transferred to option A.

99. Youth members who joined the Order prior to January 1, 1941, and carry option BY, CY, and DY (abolished by the Fifth National Convention) may retain their options until they reach the age of 25, but shall be charged with the same dues increases that apply to options B, C and D, respectively.

Housewives

100. Housewives shall be admitted only to Options A, AM or AY, which carry no sick benefit.

101. Women members belonging to options other than A, AM or AY, when their sole occupation becomes that of a housewife, shall be transferred to either Option A, AM or AY, and it shall be their duty to notify the secretary of their lodge of the change in status, and the secretary in turn shall notify the General Office to that effect.

Payment of Dues

102. Monthly payments for the foregoing options, exclusive of mortuary dues for all members carrying up to and including two thousand dollars ($2,000) insurance, are as follows:

Option	Sick Benefit Fund	Expense Fund	Total Monthly Dues
AM	.....	$.40	$.40
A	.03	.22	.25
AY (Ages 16-25)	.03	.27	.30
B ($4)	.30	.42	.72
C ($6)	.45	.44	.89
D ($8)	.60	.45	1.05
E ($10)	.83	.52	1.35
H ($15)	1.60	.60	2.20

Members carrying three thousand ($3,000) dollars insurance are required to pay, in addition to the payments above provided, ten cents (10¢) per month and those carrying five thousand ($5,000) dollars, twenty cents (20¢) per month additional to the Expense Fund in all options.

103. Whenever the dues charged for the mortuary or sick benefit insurance fail to cover the payments for the corresponding benefits granted by the Constitution and By-Laws, in accordance with the various options set forth, the General Council shall levy a special assessment or increase the dues to cover such deficiency.

LIFE INSURANCE

Classes and Plans of Insurance

104. The life insurance (mortuary benefits) are divided into the following classes according to the amount granted:

Class V	$5,000
Class X	3,000
Class O	2,000
Class 1	1,000
Class 2	500
Class 3	250
Class 4 (not granted after Dec. 31, 1947)	150
Class 6 (not granted after Dec. 31, 1947)	100

The following plans of life insurance (mortuary benefits) are hereby established:

a. Step Rate to Age 65 ("One Year Renewable Term," with reducing death benefits.)

b. Convertible Step Rate ("One Year Renewable Term with cash values, converted at age 55 to Whole Life Level Rate.")

c. Whole Life, Level Rate Payments.

d. Twenty (20) Payment Life.

e. Insurance Paid Up at Age 65. (Not granted after Dec. 31, 1947.)

f. Twenty (20) Year Endowment.

Step Rate to Age 65

105. This plan of insurance provides for step rate payments which increase from year to year from the date of joining to the age of 65. For this purpose the attained age on January 1 following the date of joining shall be increased to the next succeeding age and on each January 1 thereafter the attained age shall be advanced one year until the attainment of age 65. Upon the member reaching the age of 65 the rate becomes level and the amount of insurance decreases each subsequent year as set forth in Table No. 10.

The monthly dues are in accordance with the "American Men Ultimate" Table of Mortality

resignation, suspension, dropping from the rolls, expulsion, or death.

88. A new member is entitled to receive benefits according to his option from the first day of the fourth month after his entrance date, provided he has paid at least three full monthly rates. He is not entitled to receive any benefits of whatever kind, whether sick, dismemberment or death, if the sickness, dismemberment or death occurs during the first three months of membership. If death occurs within three months of membership, all dues paid by the deceased member shall be returned to the beneficiary.

War Risk Clause

(This section does not apply to benefits granted to members on or before February 1, 1940.)

89. No benefits shall be paid for death, sickness or injury occurring outside of North America while the member is in military or naval service in the armed forces of any country at war, declared or undeclared, or for death, sickness or injury occurring within six (6) months after returning to North America and resulting directly or indirectly from causes arising while the member was in the military or naval service in the armed forces of any country at war, declared or undeclared; except an amount not less than the full reserve of the certificate less any

indebtedness, or the mortuary payments made less any indebtedness, whichever shall be greater.

90. Beneficiaries of members who carry insurance as set forth in Sections 106, 107, 108, 108a and 109, which provide for surrender values shall, in the event that no death benefit is paid in accordance with the provisions of Section 89, be entitled to surrender values as provided for in the Membership Certificate and any dividend, less any indebtedness.

Reduction in Benefits

91. Every member may apply for and receive reduction in the benefits for which he has been paying. These reductions shall take effect upon the date of the corresponding change in the dues rate.

Increases in Benefits

92. Every member may apply for an increase in his benefits, subject, however, to the age limitations and other regulations applying to new members. Requests for increases in benefits must be made on forms prescribed by the General Office and must contain the findings of a physical examination made by a physician duly approved by the General Medical Examiner, if so required by regulations applying to new applicants for membership. All such requests are subject to approval or rejection by the General Council. When such a request is approved by

with interest assumption of 3½% as set forth in Table No. 1.

This plan of insurance is issued only up to the age of 50.

(The General Council shall have full authority in accordance with the decision of the Convention to discontinue granting of insurance on this plan when it finds it advisable.)

All members carrying this plan may at any time up to the age of 65 change to level rate payments without a medical examination and pay a rate in accordance with the age attained by them at the time of change. Members who have not passed their 50th birthday may also change to the new "Convertible Step Rate Plan," which automatically changes to the Whole Life level rate at age 55.

Unlimited Step Rate For Life

(Discontinued June 1, 1941)

105a. All members who joined before June 1, 1941 carry a non-limited step rate for life and retain the full amount of death benefit after they reach the age of 65. Their monthly dues continue to increase as set forth in Table No. 1.

Members who joined the Order before January 1, 1939 (in the State of Illinois before January 1, 1938) pay their dues in accordance with the "National Fraternal Congress" Table of Mortality with interest assumption of 4% as set forth in Table No. 11.

Members who joined the Order with the step rate plan of insurance from January 1, 1939 (in the State of Illinois from January 1, 1938) up to June 1, 1941 pay their dues in accordance with the "American Men Ultimate" Table of Mortality with interest assumption of 3½%.

All members carrying this plan may at any time up to the age of 65 change to level rate payments without a medical examination and pay a rate in accordance with the age attained by them at the time of change. Members who have not passed their 50th birthday may also change to the new "Convertible Step Rate Plan," which automatically changes to the Whole Life level rate at age 55.

Convertible Step Rate Insurance

106. This plan of insurance is a combination of step and level rates. This plan provides for step rate payments which increase from year to year from the date of joining up to the age of 55. Upon the member reaching the age of 55 the step rate insurance shall be automatically converted (changed) to whole life level rate insurance. The dues payments on this plan—both the step rate dues to age 55 and the level rate dues from age 55—are based on the "American Men Ultimate" Table of Mortality with interest assumption of 3% as set forth in Table No. 13.

This plan provides for surrender values in case of termination of membership after three years from date of joining. The surrender values are granted as follows:

a. At any time up to the age of 55 the insurance will automatically be continued in force wihout any further payment as extended insurance as provided in Table No. 14.

b. At any time after the member reaches the age of 55 he has the choice either to extended insurance, which is granted automatically, or to cash or paid-up insurance values as set forth in Table No. 14a which are granted upon written request made

within ninety (90) days of termination of membership.

This plan of insurance is issued only up to the age of 50.

Whole Life Insurance—Level Rate Payments

107. This plan provides for payments based on the age of the member at his nearest birthday at the time of joining and remains the same for life. (Note exception for Option AY, Section 96.)

The dues payments of such members are in accordance with the "American Men Ultimate" Table of Mortality with interest assumption of 3½% as set forth in Table No. 2.

Members who carry insurance on this plan and pay in accordance with this table, in case of their suspension and subsequent membership termination, after three years of fully paid up membership are automatically entitled to extended insurance or upon written request made within ninety (90) days after termination of membership to cash and paid-up insurance values as set forth in Table No. 6.

Members carrying level rate insurance who joined the Order prior to January 1, 1939 and in the State of Illinois before January 1, 1938 pay their dues in accordance with the "National Fraternal Congress" Table of Mortality, as set forth in Table No. 12, and are not entitled to surrender values.

Twenty (20) Payment Life

108. This plan of insurance provides for payment of mortuary dues based on the age of the member at his nearest birthday at the time of joining and remains stationary for twenty (20) years. At the expiration of that period the member's insurance becomes fully paid up for life without any further payment of mortuary dues.

The rates for this plan are based on the "American Men Ultimate" Table of Mortality, Illinois Standard, with a 3% interest assumption as set forth in Table No. 15.

This plan of insurance is granted only up to the age of 50 years in the amounts of $500, $1,000 and $2,000 only.

Members who carry insurance on this plan in case of suspension and subsequent membership termination after three years of fully paid up membership are automatically entitled to extended insurance, or upon their written request made within ninety (90) days after termination of membership to cash or paid-up insurance values as set forth in Table No. 16.

When the life insurance carried by members under this plan becomes fully paid up and payments for such insurance stop, the members shall have the right to retain sick benefits, which they may carry at such time, and their membership in the Order. In such cases the members shall con-

tinue to pay the full expense fund charges, as well as the payments for the sick benefits.

The first year's insurance under this plan is term insurance purchased by all of the monthly rates paid during the first certificate year.

Insurance Paid Up at Age 65

(This plan of insurance not granted after December 31, 1947)

103a. This plan of insurance provides that mortuary dues be paid only until the member reaches the age of 65, after which the member retains his insurance, fully paid up, until the time of death without any further payment of mortuary dues.

The monthly dues are payable on the level rate in accordance with the "American Experience" Table of Mortality with interest assumption of 3½% as set forth in Table No. 3.

This plan of insurance was granted only up to fifty (50) years of age and in amounts not less than $500.

Members who carry insurance on this plan, in case of suspension and subsequent membership termination after three years of fully paid up membership are automatically entitled to extended insurance, or upon their written request made within ninety (90) days after termination

of membership to cash and paid-up insurance values as set forth in Table No. 7.

Twenty (20) Year Endowment

109. This plan provides for payment by members for twenty (20) years at the expiration of which the member receives the full face value of his life insurance policy in cash as an endowment.

The dues payment of such members are in accordance with the "American Men Ultimate" Table of Mortality—"Illinois Standard" with interest assumption of 3% on level payment plan as set forth in Table No. 4.

This plan of insurance is granted only to candidates up to the age of 50 in the amounts of $500, $1,000 and $2,000 only.

When the insurance carried by members under this plan becomes fully paid up, and the members receive their endowment, they shall have the right to retain the sick benefits which they may carry at such time and their membership in the Order. In such cases the members shall continue to pay the full Expense Fund charges, as well as the payments for the sick benefit.

Members who carry insurance on this plan, in case of suspension and subsequent membership termination after one year of fully paid up membership, are automatically entitled to an

extended insurance and at the end of twenty (20) years to an additional pure endowment, if the cash values for extended insurance are more than sufficient to cover the extended insurance cost until the end of the twenty (20) years as set forth in Table No. 8. Such members are also entitled upon their written request made within ninety (90) days after termination of membership to either cash value or to a paid-up endowment as set forth in Table No. 8.

The first year's insurance under this plan is term insurance purchased by a part of the monthly rates paid during the first certificate year.

Tables

110. All tables referred to in the various sections of this Constitution and By-Laws are published separately but shall be deemed to be Section 110 hereof.

111. Members whose membership has terminated and who carry paid-up or extended life insurance, may rejoin the Order as new members. However, the total amount of insurance said members may carry, together with the paid-up or extended insurance, shall not exceed the maximum insurance granted at that age.

112. If the stated periodic contributions to the Mortuary Fund are insufficient to pay all reported claims and to provide for the maintenance

of the Fund, or in case the annual valuation of all membership certificates in force shall fall below the one hundred per cent (100%) minimum required by law, then an additional contribution shall be collected from the members to meet such deficiency.

FUNDS

Division of Funds

113. The following funds are hereby established:

1. Mortuary Insurance Fund
2. Sick Benefit Insurance Fund
3. Expense Fund
4. Minors Trust Fund
5. Beneficiaries Trust Fund

Mortuary Insurance Fund

114. In this fund shall be deposited all mortuary dues and assessments except the first year's dues of the Twenty (20) Payment Life Plan and except that part of the first year's dues of the Twenty (20) Year Endowment Plan which is not needed for reserve purposes and death claims, and also all net accretions to this fund; withdrawals from this fund shall be for the payment of all death benefit claims, with the exception of the first year's death claims of the Twenty (20) Payment Life Plan, payment of cash surrender or endowment payments and for payment of dividends.

Sick Benefit Insurance Fund

115. In this fund shall be deposited all sick benefit dues and assessments, including all accretions to this fund; withdrawals from this fund shall be for payment of various sick benefits and dismemberment benefits only.

Expense Fund

116. In this fund shall be deposited all money received other than required to be deposited in the Mortuary Insurance, Sick Benefit Insurance, Minors Trust and Beneficiaries Trust Funds, including the entire first year's contributions received from members carrying their insurance on the Twenty (20) Payment Life and the Twenty (20) Year Endowment Plans, (exclusive of that part of the first year's dues on the Twenty (20) Year Endowment Plan which is needed for reserve purposes and death claims). Junior Expense dues shall likewise be deposited in this fund. From this fund, as apportioned by the General Council, shall be paid all necessary disbursements for the following purposes:

a. Administration
b. Organization
c. Education and Cultural
d. Official organ
e. Publicity
f. Convention
g. All other necessary expenses of the Order.

h. All first years death claims of the Twenty (20) Payment Life Plan.

Minors Trust Fund

117. In this fund shall be deposited all moneys due to minor beneficiaries. A minor shall be considered any person under the age of 21. A separate account in the Minors Trust Fund shall be opened for each minor beneficiary in which shall be deposited money belonging to said beneficiary. The title of said account shall be as follows: "The International Workers Order, Inc., in trust for (name of minor beneficiary)." Moneys deposited in such individual trust account shall become payable to the beneficiary for whose benefit said account has been opened upon said beneficiary reaching the age of 21, and at that time said beneficiary shall receive the principal sum and interest accumulated thereon. Moneys deposited in the Minors Trust Fund may also be paid to any duly appointed guardian of said minor.

Beneficiaries Trust Fund

118. In this fund shall be deposited mortuary benefits due to a beneficiary who cannot be located within two years after the death of the member by whom he has been named a beneficiary. A separate account in the Beneficiaries Trust Fund shall be opened for such beneficiary, in which shall be deposited money belonging to

said beneficiary. The title of such account shall be "The International Workers Order, Inc., in trust for (name of beneficiary)." Moneys deposited in such individual trust account shall be payable to the beneficiary if located within ten years from date of deposit. Such beneficiary shall receive the principal and interest accumulated thereon.

119. If a missing beneficiary fails to claim payment within ten years after mortuary benefit was deposited in trust for such beneficiary, the amount so deposited shall thereupon revert to the Mortuary Fund of the International Workers Order, Inc. If, thereafter, payment of said sum so reverting and deposited in the Mortuary Fund shall be directed to be paid by any court of competent jurisdiction or by the General Council of the Order, then the amount due and payable shall be the exact amount reverting to and deposited in the Mortuary Fund, without interest.

SICK BENEFITS

120. Any member carrying either option B, C, D, E or H shall, when totally disabled from following any gainful occupation as a result of illness or accident, be entitled to receive sick benefits according to his option.

121. No member shall be entitled to receive any sick benefit, tuberculosis benefit or dismem-

berment benefit after he has reached his sixty-fifth birthday.

122. A member shall be entitled to sick benefit only after he has been a fully paid-up member of the Order for three (3) consecutive months and shall not be entitled to any benefits for disability during the first three (3) months of membership.

123. No member shall be entitled to receive sick, tuberculosis, or dismemberment benefit for a condition which was specified by the Order as non-compensable at the time of his joining, and no benefits shall be paid for any condition that arises from sickness or accident originating before the member joined the Order, before securing sick benefit option or before the date when his first month's dues were paid.

124. Sick benefit is not paid for the following conditions:

a. When disability is caused by venereal disease, its attendant ailments, complications, or consequences;
b. When the member is suffering from a condition for which he has previously collected disability (cripple) benefits;
c. When disability is caused by the habitual use of narcotics or poisonous drink;
d. When the member does not carry out the instructions of his attending physician;
e. When women members are disabled because

of an illness connected with pregnancy, childbirth, menstruation, or menopause disturbances or their attendant complications or consequences;

f. When a member, though ill, follows any occupation, even if only partially.

125. Sick benefit shall be due and payable only from the date of the first examination by the attending physician.

126. Sick benefits are payable only for seven (7) full days of consecutive disability.

127. Sick benefit according to option shall be paid for the period of not more than fifteen (15) weeks to any member during any one period of twelve (12) consecutive months.

128. If a member's disability due to the same or any connected sickness continues directly or intermittently after the member has received fifteen (15) weeks' sick benefit, he shall thereafter be entitled to receive not more than fifteen (15) weeks' sick benefit rated at one-half of the amount of his weekly sick benefit in accordance with his option, payments to commence 12 months from the beginning of his disability; and if the illness continues or recurs subsequently, the member shall be entitled to receive not more than 10 weeks' sick benefit at one-half rate commencing 24 months from the beginning of his disability. After receiving this benefit, a member

during his lifetime is not thereafter entitled to any more sick benefits for the same or any connected illness.

129. Increases in sick benefit option shall take effect only 3 months after the charge for the increased benefits commenced.

METHODS OF CLAIMING SICK BENEFITS

130. A member who becomes sick and disabled shall immediately notify the financial secretary or the sick benefit director of his lodge who shall thereupon supply him with sick benefit claim certificate blanks provided for that purpose by the General Office. The respective lodge officer shall then instruct a committee of the lodge to visit the sick member at least twice a week.

131. A separate certificate must be filed for each seven (7) days of disability.

132. Each sick benefit certificate must be signed by the attending physician who is required to answer each question on the blank.

133. Each certificate must be signed by the member and countersigned by the visiting committee of the lodge.

134. Each certificate must be signed by the financial secretary and the sick benefit director of the lodge, and have the seal of the lodge affixed thereto. All sick benefit claims shall be regularly reported to the next lodge meeting.

135. Sick benefit certificates must be forwarded

to the General Office not later than 90 days from the last day of the period claimed.

136. When a member is treated in a nospital or similar institution, he may, instead of submitting weekly claim blanks signed by a physician, submit a statement of the institution covering the period of his confinement in the institution. The statement shall contain a diagnosis of his illness. This statement together with weekly claim blanks properly signed and attested must be forwarded to the General Office not later than fifteen (15) days after the date thereof.

If the member is confined in an institution, no signatures of visiting committees on the weekly claim blanks are necessary.

137. If a member is ordered by his attending physician to an out-of-town resort on account of sickness and resulting disability, he must, in order to secure sick benefit, furnish a statement of his attending physician to that effect, and also secure a notarized statement of the management of the place where he stayed indicating his date of arrival and departure, and this statement must be sent to the General Office with the regular weekly claims.

138. If a member becomes disabled while away from his city of residence, and his lodge cannot take care of his claim, he shall immediately notify the General Office, which shall instruct a lodge, if there be one in the locality where the

member finds himself, to take care of his claim in the same manner as if it were a claim of one of its own members. If there is no lodge in that locality, the General Office shall forward to the member the necessary claim blanks, which shall be filled out by the attending physician, who shall acknowledge his statements before a notary public.

139. If a member-at-large becomes disabled, he shall act in the same manner as provided in Section 138.

140. In all cases where claims are not properly filled out or where the nature of the statement is such that additional information is necessary, the General Office may require, and the claimant member of the lodge shall assist, in procuring such additional information. No claim shall be paid until satisfactory answers to the inquiries of the General Office are received and all necessary requirements are complied with fully.

141. Whenever a signature of a physician is required by this Constitution and By-Laws, only the signature of a person licensed by his state to practice internal medicine shall be accepted.

Misstatement of Age in Relation to Sick Benefit

142. Whenever the age of a member stated in the sick benefit claim is greater than that stated in his application for membership, the General Office may require, and the claimant member

must thereupon produce, documentary proof of his correct age. Payment of sick benefit may be withheld until such proof is forthcoming. If no proof is received within thirty days after requested, the recorded age of the member shall be changed to correspond to that stated in the sick benefit claim. If according to such claim the member was not of an insurable age for sick benefit (45 years when the member was granted sick benefit) his sick benefit option may be terminated, and the amount payable for sick benefit in such case shall be limited to the premiums theretofore paid for said sick benefit option.

PAYMENT OF SICK BENEFIT CLAIMS

143. All sick benefit claims approved by the General Office shall be paid by checks drawn to the order of the claimant member and shall be sent to the secretary of his lodge. Members at large shall be paid by checks mailed directly to the claimant members.

144. The financial secretary of the lodge shall, at the time of delivery of the check due to the member, demand any amount which the member owes for dues and assessments, and shall withhold delivery of the check if payment by the member is not forthcoming.

145. A lodge has no right to deposit a member's sick benefit check in its treasury without the member's endorsement.

146. In cases of members at large the General Office may deduct from the sick benefit claim any amount which the member owes for dues or assessments.

147. Sick benefit due to a member mentally incapacitated shall be paid to his beneficiary in accordance with the member's direction in his application. If such beneficiary cannot be located, resides abroad, is a minor, or has died, the sick benefit due may, at the option of the General Council, be paid to such relative of the incapacitated member or to any other person who, the General Council finds, is equitably entitled thereto by reason of his having incurred expense on said member's behalf.

CONSUMPTION BENEFIT

148. All members of the Order (with the exception of members in option AM) who become disabled due to consumption (pulmonary tuberculosis) shall be entitled to consumption benefit. The presence of pulmonary tuberculosis must be established by the member at his own expense, based upon the findings of a specialist or an institution acceptable to the General Medical Examiner.

Wherever the word "consumption" is used in this Constitution and By-Laws it shall mean pulmonary tuberculosis (tuberculosis of the lungs) only.

149. All members (except those in option AM) who are disabled by consumption shall be entitled to consumption benefit of twenty dollars ($20) per week for a total of thirty (30) weeks.

150. A member is entitled to receive the full amount of consumption benefit only once during his lifetime.

151. Members are not entitled to any other sick benefits while receiving consumption benefits; such members are not entitled at any time to receive sick benefits for a condition connected with consumption, and if they have received any sick benefit for such disability previous to the approval of the consumption benefit, the amount so paid shall be deducted from the consumption benefit.

152. No member is entitled to consumption benefit if he has contracted tuberculosis prior to the time he became a member or before the expiration of six months of his membership.

153. Claims for consumption benefit shall be filed on special blanks provided for that purpose, and upon presentation shall be payable for not more than five weeks in advance.

DISMEMBERMENT BENEFITS

(Formerly known as Disability (Cripple) Benefit)

154. Every member of the Order, excluding those carrynig Option AM, shall, in addition to

sick benefit, be entitled to dismemberment benefit if, as a result of a condition originating after three months of his membership and after July 1, 1944, he suffers a permanent loss as set forth in the following schedule:

Loss of half or whole finger, or mortification of a finger, except thumb: $25.

Loss of first joints of any two fingers, except the thumb: $25.

Loss of half or whole thumb, or its mortification: $50.

Loss or mortification of any hand or arm: $200.

Loss or mortification of any foot or leg: $200.

Loss of sight of an eye: $200.

Loss of two limbs or both eyes: $400.

155. The term "loss," "mortification" or "loss of sight," as used in the foregoing section, means a 75 per cent or more permanent total disability of the injured organ.

156. The total amount of dismemberment benefits payable to any one member during his lifetime shall not exceed four hundred dollars ($400), irrespective of the number or extent of his injuries or disability.

157. Claims for dismemberment benefits must be filed on special blanks provided for that purpose. Such claims must be signed by a physician, acknowledged before a notary public, and approved by the lodge.

MEMBERS ABROAD

158. Members are not entitled to receive sick benefit, consumption or dismemberment benefits for any period during which they are outside the United States, or Canada, except when in the service of the United States.

PAYMENT OF DEATH BENEFIT CLAIMS

159. In the event of the death of a member, the beneficiary shall immediately advise the financial secretary of the lodge thereof. The lodge secretary shall immediately notify the General Office of the death of a member.

160. The death benefit claims shall be payable within ninety (90) days after receipt of all necessary documents and due proof of death required by this Constitution and By-Laws.

Proof of Death

161. The lawful beneficiary or the secretary of the lodge shall supply the General Office with a photostat or certified copy of the death certificate and the original membership certificate of the deceased, as well as all other information or documents which the General Office may require or demand.

Minor Beneficiary

162. If the beneficiary is a minor (under the age of twenty-one), then the amount due to such

beneficiary shall be deposited in the Minors Trust Fund as provided in Section 117.

This sum can be withdrawn by the beneficiary only after he reaches the age of twenty-one (21) years or by a legally appointed guardian.

Funeral Expenses

163. The General Council has the right to deduct from the mortuary benefit, without the consent of the beneficiary, an amount permitted by law but in no case exceeding two hundred and fifty ($250) dollars, for the funeral expenses of the deceased. This amount shall be payable to such person or persons who, in the opinion of the General Council, incurred expenses for the burial of the member.

Misstatement of Age

164. If it shall be found at any time before the final settlement of the death benefit that the age of the member has been misstated, and the discrepancy and the rate involved have not been adjusted, then the amount payable to the beneficiaries shall be such as the rate would have purchased at the correct age.

165. If the correct age was not an insurable age under the Constitution and By-Laws of the Order, then only the mortuary payments shall be returned. If the age has been overstated, no additional amount of insurance or value shall be

granted for any excess amount paid, but such excess mortuary payments shall be returned to the beneficiary without interest.

Suicide

166. Regardless of the amount of insurance carried, the only amount payable to the beneficiary of any member, sane or insane, who, within two years of commencement of membership, commits suicide, shall be a sum equal to the mortuary payments previously paid by the deceased member, with interest thereon at the rate provided by the insurance plan carried.

In case of a member committing suicide within two years after increasing the amount of his insurance, the amount payable to his beneficiary shall be only that amount of insurance which the member carried before the increase. The difference in the mortuary dues paid for the increased insurance shall be refunded to his beneficiary.

Lapse of Beneficiary

167. In the event that the original designation of the beneficiary becomes illegal or the beneficiary has died before the member and no other designation has been made, then the death benefit shall be payable to the following relatives or next of kin surviving, in the following order:

husband or wife, children and legally adopted children, father and mother, brother and sister; if there is no such next of kin surviving, then to persons dependent upon the member.

168. If there are no persons surviving the deceased member who come under the categories set forth in the foregoing section, then the benefit shall be payable to the estate of the deceased.

SUSPENSION OF MEMBERS

169. A member stands automatically suspended if he owes for dues or assessments an amount equal to three times his monthly dues.

170. A member may also be suspended if he fails to submit to any resolution or decision of his lodge made in accordance with this Constitution and By-Laws.

171. A suspended member is not entitled to any benefits for the period of his suspension; nor shall any insurance be paid for the death of a suspended member who dies during the period of his suspension, except that the beneficiary of a member who dies during suspension and is entitled to extended insurance, shall receive the full benefit.

LIFTING OF SUSPENSION

172. A member who has been suspended for non-payment of dues, or whose resignation has been accepted by the General Office, may be reinstated within two months after his suspension

or resignation provided he pays up all his arrears. He shall be considered reinstated from the date his arrears are received by the financial secretary of his lodge, and only from that date on shall he be entitled to the benefits of his membership in the Order.

TERMINATION OF AND REINSTATEMENT TO MEMBERSHIP

173. A member who has not been reinstated after expiration of two months from the date of his suspension shall be considered automatically dropped from the membership rolls and all his rights in the Order terminated, except those entitled thereto shall retain their rights to surrender values.

174. One whose membership has been terminated for non-payment of dues and who did not receive any cash surrender value may thereafter be reinstated at any time within three years after date of termination of membership on payment of all arrears and dues accruing prior to date of reinstatement, provided he is in good health; his readmittance shall not be in effect until and unless approved by the General Council, which may require that he submit to and pass satisfactorily a medical examination. Should the medical examination prove unsatisfactory to the General Medical Examiner, the application for reinstatement shall be deemed rejected, and any reinstatement dues paid shall be returned and

such applicant for reinstatement shall not be entitled to any benefits or insurance.

175. If the application for reinstatement is approved by the General Council, the member shall only be entitled to benefits for disability originating after the date of the payment of his arrears to the financial secretary of the lodge. Should it at any time thereafter be proved that the member was sick or disabled during his period of suspension or membership termination, then he shall not be entitled to any benefits for such sickness or disability, and the General Council may, on that ground, cancel his reinstatement. Should death occur as a consequence of a condition which existed during the period of his suspension or membership termination, then no insurance shall be paid on his death.

Readmittance to Membership

176. A member whose membership has been terminated for non-payment of dues may at any time be again proposed for membership in the Order, and such application shall be subject to the general regulations applying to new applicants.

TRANSFERS

177. A member desiring transfer into another lodge shall apply for and receive a transfer card from the secretary of his lodge, provided the

member has paid his dues in full, including the month in which the transfer card is issued.

178. The issuance of a transfer card by any lodge shall be reported immediately to the General Office.

179. A member transferring to another lodge shall report to the secretary of the lodge to which he is being transferred, or to the General Office if the transfer is to make him a member-at-large.

180. The secretary of the lodge receiving the transfer shall report same to the General Office.

181. The General Council has full power and right to transfer any member from one lodge to another, or to the class of a member-at-large or from a member-at-large to a lodge, whenever in its judgment such procedure is deemed advisable.

182. If a lodge refuses to issue a transfer card on the application of a member or refuses to accept a transfer thereto of any member, such member may appeal to the General Council, whose decisions in such cases shall be final and not subject to further appeal.

183. The General Council shall not compel a lodge to receive a member by transfer when the member is drawing disability benefit, is under the care of a physician, or is suffering from a chronic disease or ailment.

184. Upon request of the member the lodge, within thirty days, may recall any transfer issued and reinstate the member in the lodge. In

such case the financial secretary of the lodge shall report the recall of the transfer to the General Office.

TRAVELING CARDS

185. When a member leaves the United States for a foreign country, Canada excepted, for a period of three months or more, he shall take out a traveling card which is valid for six months, and which is renewable for three additional periods of six months each or a total of two years; if after the expiration of the two-year period the member does not return, his membership in the Order terminates automatically, except those entitled thereto shall retain their rights to extended insurance or cash surrender values.

186. A member taking out a traveling card shall pay his dues in advance for a period of six months. With every renewal of his traveling card he shall forward to the General Office an amount equal to six months' dues.

187. Members with traveling cards are not entitled to sick benefits and are not required to pay dues for same.

188. After their return, payments for sick benefits shall be resumed and such members shall be entitled to sick benefit only after the expiration of three months from the date that sick

benefit payments have been resumed, provided that they have paid three monthly assessments into the Sick Benefit Fund.

CHARGES

189. Charges against members of the Order shall be submitted in writing to the financial secretary of the lodge to which the accused member belongs.

190. Copies of the charges shall be sent to the accused member by registered mail by the financial secretary of the lodge receiving the same, and the accused member and such witnesses as he desires to bring in his defense shall be given an opportunity to be heard.

191. Charges against members of the General Council shall be sent to the General Secretary-Treasurer, who shall refer them to the General Council for hearing and decision.

192. The General Council or any lodge before which charges are pending shall afford a fair opportunity to both sides to any controversy to be heard, shall call such witnesses as they may deem necessary, and shall advise the accuser and the accused of its decision in writing.

EXPULSIONS

193. A member found guilty of having committed any of the following offenses may be expelled:

a. Making fraudulent statements in his application for membership or to the examining physician during his medical examination;

b. Obtaining or converting unlawfully money or other property belonging to the Order or to any lodge or any committee thereof;

c. Deriving or attempting to derive unlawfully any benefit from the Order or from any lodge;

d. Acting contrary to the Constitution, By-Laws, principles or interests of the Order or any of its lodges;

e. Refusing or failing to pay to the lodge or to the General Office any special assessments or any local fines that may be levied against him.

Members expelled for any of the foregoing offenses shall be deprived of all rights as members of the Order. Such members, except those expelled within the contestable period for material misrepresentation in their applications for membership, may retain their insurance in force by payment of their proper dues and assessments; all expelled members, however, shall retain their rights to surrender values if otherwise entitled thereto.

RESIGNATIONS

194. Resignations from the Order shall be submitted to the General Council, which has sole discretion and authority to accept or reject the same.

APPEALS

195. Appeals from decisions of a lodge or any city, district, or state committee or other subordinate body or from any ruling of any General officer or committee may be taken to the General Council, whose decision shall be final except in cases where the decision directs expulsion of a member from the Order. In such events the accused may appeal to the General Convention, and from the decision of the latter to a general referendum of the Order, which last decision shall be final and binding. The expense of an appeal through a general referendum shall be borne and paid for in advance by the aggrieved member.

196. The notice of appeal from a decision from a lower body to a higher body must be filed within thirty days with the body to which the appeal is addressed.

197. A member who appeals to the General Council against a decision of expulsion shall nevertheless retain his membership in the Order until his appeal has been decided by the General Council; if the latter affirms the decision of ex-

pulsion, he shall thereafter remain expelled unless the General Convention or a referendum reinstates him.

REFERENDUM

198. Any proposal shall be submitted to a referendum vote of the membership of the Order provided:

a. The majority of the present voting delegates at any General Convention, regular or special, decides so to do;
b. The General Council so decides;
c. Twenty lodges from five different states make such demand in writing.

Proposals adopted pursuant to this subdivision (c) shall be submitted to the next General Convention and shall not become effective unless adopted by said General Convention.

199. Referendum voting shall be on ballots provided for that purpose by the General Council and shall be forwarded to every lodge not later than thirty days before the date set for voting.

200. Referendum voting shall take place at lodge meetings specially designated for that purpose.

201. Sixty days shall be allowed for voting on a referendum.

202. Lodges that have been in existence less

than three months prior to the date of a referendum call shall not be entitled to vote on that referendum.

203. A particular proposal may be submitted to a referendum vote only once in any twelve-month period.

204. All referendum votes shall be counted by the General Council, which shall inform the lodges of the results.

AMENDMENTS TO THE CONSTITUTION

205. This Constitution and By-Laws may be amended as follows:

a. By decision of a majority of the present voting delegates at a General Convention, regular or special;
b. By a referendum vote when so decided upon by the General Convention, regular or special;
c. By the General Council whenever any provisions of this Constitution and By-Laws conflict with any law of any state of the United States.

206. Notice of all amendments to the Constitution and By-Laws passed by the General Council in accordance with the provisions of Section 205 shall be published in the official organ of the Order, and from and after the date of such publication, such amendments shall be deemed

in full force and effect and shall be binding on every member of the Order, and upon all those deriving any legal rights from any such member; amendments passed by the General Council shall remain in full force and effect until amended or repealed by a General Convention.

JUNIOR (CHILDREN'S) INSURANCE

207. Any child below the age of sixteen years next birthday is eligible for insurance and may become a junior member of the Order upon written application by a parent or a guardian of the child. The signature of the parent or guardian must be witnessed by an adult member of the Order, who shall sign his name in the space provided for that purpose.

Plans of Insurance

208. Junior members of the Order may carry life insurance according to either of two following plans: (a) Insurance to age 16 years—Class 1 and Class 2, (b) Insurance with cash benefits—Class S1 and Class S2.

Junior Insurance to Age 16

209. This form of insurance continues until the child passes his 16th birthday. The ultimate insurance value is $500 in Class 1 and $250 in Class 2 with lower benefits in the event of death at an age younger than 10, as provided in Section 211.

The dues payments are 25¢ per month in Class 1 and 15¢ in Class 2 of which 14¢ in Class 1 and

7¢ in Class 2 are for the Mortuary Fund and the balance of 11¢ and 8¢ for the Expense Fund of the Order.

These dues rates are charged in accordance with "1941 Standard Industrial" Mortality Table Net Level Premium method with an interest assumption of 3%.

Junior Insurance with Cash Benefits

(Term to Age 16 with Pure Endowment)

210. Children carrying this plan shall have life insurance in the ultimate amount of $500 in Class S1 and $250 in Class S2 with lower benefits in the event of death at an age younger than 10 as provided in Section 211.

On the first day of the calendar month after the child passes its sixteenth (16th) birthday there shall be payable to the beneficiary an accumulated cash benefit (saving) in accordance with the age at the time of joining and duration of membership as set forth in Table No. 9.

The beneficiary of a child joining within first six (6) months from birth shall be entitled on the sixteenth (16th) anniversary of the child's fully paid up membership to a cash payment of $500 in Class S1 or $250 in Class S2.

In case of suspension and subsequent membership termination after one year of paid up membership, the insured automatically carries an

extended insurance or upon the written request of the beneficiary made within ninety (90) days after termination of membership there shall be payable a cash value as set forth in Table No. 9.

The monthly dues payments are $2.50 per month in Class S1 and $1.25 per month in Class S2. $2.28 per month in Class S1 and $1.14 per month in Class S2 of these dues are for the Mortuary Fund and 22¢ in Class S1 and 11¢ in Class S2 are for the Expense Fund of the Order. These dues are in accordance with the "1941 Standard Industrial" Table of Mortality—"Illinois Standard" with interest assumption of 3%.

The first year insurance under this plan is term insurance purchased by a part of the monthly rates paid during the first certificate year.

Amounts Payable
At Death Before Age of Ten

211. In case of death of a Junior member before reaching the age of 10, the amount of insurance payable shall be as follows:

A member carrying Junior Insurance in the ultimate amount of $500 (Class 1 or Class S1)

Up to the age of one	**$100**
From one to two	**200**
From two to three	**300**
From three to ten	**400**

A member carrying Junior Insurance in the ultimate amount of $250 (Class 2 or Class S2)

Up to the age of one	**$ 50**
From one to two	**100**
From two to three	**150**
From three to ten	**200**

212. All Junior members who joined before July 1, 1938, shall retain their previous insurance benefits (maximum of $350); those nine years old and over shall pay fifteen cents per month; those under nine years shall pay twelve cents per month. Of these monthly payments seven cents per child per month shall go into the Children's Mortuary Fund and the balance of 8¢ and 5¢ to the Expense Fund of the Order.

Children's Mortuary Fund

213. There shall be established a Children's Mortuary Fund, which shall be maintained and accounted for separately from all other funds of the Order. In this fund shall be deposited all the mortuary dues and assessments as well as all accretions to this fund.

Whenever the Children's Mortuary Fund falls below the legally required 100%, the General Council shall levy an assessment or increase the dues payments to meet such deficiency.

Membership Benefit Certificate

214. The parent or guardian who signed the application for insurance of a junior member shall receive a Membership Certificate designating such parent or guardian as beneficiary, and setting forth the amount of insurance payable.

Payment of Insurance Benefits

215. Insurance benefits shall be payable upon due proof of death of the member, provided at least three monthly rates have previously been paid. The insurance shall go into effect only three months after the date the membership certificate is issued.

Suspension and Membership Termination

216. Dues shall be paid monthly in advance. A member three months in arrears is automatically suspended; if five months in arrears, he is automatically dropped from the membership rolls. He can thereafter be reinstated by the General Council, subject to the regulations governing reinstatement of adults, as set forth in Sections 172, 174 and 175.

Change of Beneficiary

217. A beneficiary of a junior member may be changed by filing with the General Office a written application signed by the same person who signed the original application. Should the sign-

er of the original application die or cease to be guardian of the junior member, the beneficiary may be changed by filing a written request with the Order, stating the facts in the matter, and signed by the other parent or new guardian, and attested by two witnesses or acknowledged before a Notary Public. The change of beneficiary shall take effect only after its receipt and approval by the General Office.

Change in Amount or Plan of Insurance

218. Junior members may be transferred from one plan or class of children's insurance to another upon application by parent or guardian.

Junior Graduation

219. After the child passes its sixteenth (16th) birthday, it shall be graduated into the adult section and shall be properly initiated into membership of the Order.

If the Junior fails to be graduated or initiated into the adult section of the Order within twelve months after he passes his sixteenth (16th) birthday, his Junior Membership Certificate becomes void and must be surrendered for cancellation. Any reserve upon such certificate shall be paid to the party responsible for the payment of the assessment as a cash value.

If insurance higher than what was previously carried is desired, a special application must be

filed with the General Office. Should the graduated member desire insurance over $1,000 and/or weekly sick benefit of $15, then a physician's examination is required. The higher insurance and/or additional benefits shall be granted only if the request for the increase is approved by the General Medical Examiner. The General Office shall pay one ($1.00) dollar for a medical examination if such an examination is required.

Limitation of Junior Insurance

220. All provisions of the Constitution and By-Laws of the International Workers Order, Inc. are binding upon the Junior members, except as modified by the special provisions referring to the Junior Insurance.

SCOPE OF CONSTITUTION AND BY-LAWS

221. This Constitution and By-Laws shall be binding on all members and bodies of the International Workers Order.

222. References in this Constitution and By-Laws to members in the masculine gender shall apply equally to female members.

223. No subordinate body, officer or member of the Order shall have the right to waive or change any provision of this Constitution and By-Laws.

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26

Exhibit B

DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON

March 7, 1938

Mrs. Yetta Land
c/o Land and Land
808 Engineers Building
Cleveland, Ohio

Re: Dominik Stevko-C. A. No. 861

Dear Mrs. Land:

Mr. Shoemaker has referred to me your letter of March 1 requesting a copy of my opinion concerning the eligibility of aliens who are members of the International Workers Order to apply for naturalization.

I regret to say that under an old executive order, no legal officer with the exception of the Attorney General has authority to publish his legal opinions without special authorization. I might say for your information, however, that at the time the appeal in the Stevko case was pending, I reviewed the file and expressed the opinion to the Immigration Service that there was nothing in the record to indicate that membership in the International Workers Order was a ground for recommending to the courts against naturalization.

This opinion was concurred in by the Commissioner of Immigration and Naturalization and he advised the Department of Justice accordingly.

Sincerely yours,

/s/ GERARD D. REILLY
Solicitor of Labor

27 **Exhibit C**

"Commissioners Harry B. Mitchell, President, Lucille Foster McMillin, Arthur S. Flemming. Lawson A. Moyer, Executive Director and Chief Examiner.

Address only "Civil Service Commission... In your reply refer to File CL:AK:OMR and date of this letter.

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D. C. (25)

September 16, 1943

Mr. Joseph R. Brodsky
100 Fifth Avenue
New York, New York

My dear Mr. Brodsky:

Receipt is acknowledged of your communication of August 26, 1943 with which you transmitted a copy of a letter from you to the War Department regarding the suspension of Mr. Michael Skibo because he is "an agent for the International Workers Order, which is a transmission belt for the Communist Party."

As you undoubtedly know the suspension of Mr. Skibo was an administrative act of the Department and the Commission does not have the jurisdiction to inquire into the sufficiency of the reasons for the action taken by the Department.

You have asked for an expression of opinion from the Commission and if is assumed that you desire to be advised whether, in a case in which it had jurisdiction, the Commission would consider the fact that a person is an agent for the International Workers Order as affecting his suitability for government employment.

Membership in, or activity in behalf of, the International Workers Order, standing alone, has in no case been regarded by the Commission as rendering a person unsuitable for government employment. In determining the suit-

ability of an applicant for government employment, the Commission gives consideration to his entire record, including such information as is developed by investigation. If this record should establish that an individual is of good character, possesses the necessary qualifications and is loyal to the United States, the mere fact of membership in, or activity in behalf of, the International Workers Order would play no part in the final determination of the case.

By direction of the Commission:

Very respectfully,

/s/ Wm. C. Hull
Executive Assistant

28

Exhibit D

IWO-2

COMMONWEALTH OF MASSACHUSETTS

Suffolk ss. Supreme Judicial Court
No. 63127 Equity

INTERNATIONAL WORKERS ORDER, INC.

v.

COMMISSIONER OF INSURANCE OF THE COMMONWEALTH OF MASSACHUSETTS

FINDINGS, RULINGS AND ORDER

This is a petition under G. L. (Ter. Ed.) c. 176, sec. 43, to review the action of the respondent in refusing to renew the license of the petitioner to transact business in this Commonwealth. The petitioner is a fraternal benefit society organized as a corporation under the laws of the State of New York, maintaining the lodge system of association and paying disability and death benefits to its members or their beneficiaries.

The respondent on July 22, 1938, notified the petitioner in writing that its license to transact business in this Commonwealth would not be renewed because it appeared from

the report of the Committee of the Special Commission of the Legislature created by c. 32 of the Resolves of 1937 (House Document No. 2100) that the activities of the petitioner 'have definitely been of a Communistic nature'. The petitioner was advised not to admit any new members, to cease from collecting dues and assessments, to discontinue holding lodge meetings and to dissolve all subordinate lodges situated in this Commonwealth. On July 22, 1938, he reduced this order to writing and filed it in his office as required by G. L. (Ter. Ed.) c. 176, sec. 43. A true copy of the order is contained in the respondent's answer.

I ruled that the petitioner was entitled to a hearing upon the refusal of the respondent to renew the license; that, if the causes alleged were insufficient in law, the order of the respondent would be annulled; that if a cause sufficient in law was alleged, then his action would be sustained
29 if the existence of the alleged cause was shown by the evidence; and that the action of the respondent was not to be struck down unless upon such evidence as the respondent had no reasonable person acting fairly and impartially could have come to the conclusion which he did.

The respondent contended that the petitioner was acting beyond its chartered powers in three respects, to wit: holding political picnics or rallies; contributing corporate funds to the Spanish Government; and publishing the monthly magazine known as the New Order. The parties agreed that these three objections should be considered as specifications made by the respondent, and thereupon the case was continued in order to enable the respondent to inspect the books and records of the petitioner in reference to these items. Such an examination has been had. The case was then submitted upon a statement of agreed facts supplemented by a small amount of oral evidence which in the main was of no great materiality.

It would serve no useful purpose to detail the evidence. I am satisfied that the respondent acted in good faith; but I am unable to find that the petitioner violated any pro-

visions of law, that it failed to comply with the provisions of G.L. (Ter. Ed.) c. 176, or that it committed any *ultra vires* act, even though money was expended in aid of the Spanish Government, which money I find was not corporate funds but was composed entirely of voluntary contributions from the members. I do not find that the respondent was warranted in refusing to renew the license of the petitioner.

An order is to be entered annulling and rescinding the respondent's order of July 22, 1938.

30

Exhibit E

U. S. DEPARTMENT OF LABOR
IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON

Address Reply to Commissioner of Immigration and Naturalization and Refer to File Number 2580 P-4677 Cor.

March 21, 1938

Miss Carol King,
100 Fifth Avenue,
New York, N. Y.

Dear Madam:

Reference is made to your letter of February 24, 1938, in which you inquire concerning the view this Department takes regarding the right of a member of the International Workers Order to become a naturalized United States citizen. You state that this question is involved in the case of one Dominik Stevko.

As you probably know, the above-named person's petition for citizenship was denied on May 4, 1937, by the Common Pleas Court for Lorain County, Elyria, Ohio, because it was not satisfied that the petitioner was attached to the principles of the Constitution of the United States. Upon appeal to the Court of Appeals for Ohio, the decision of the lower Court in this case was affirmed.

A conclusion has been reached by this Department that so far as membership in the International Workers Order, is concerned this Service would not be warranted in opposing the naturalization of an individual because of that fact. The District Director of this Service at Buffalo, in whose district this case arose, has been informed to that effect.

Very truly yours,

By direction of the Commissioner
/s/ HENRY B. HAZARD
Assistant

31 **Exhibit F**

DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
PHILADELPHIA

Earl G. Harrison, Commissioner

Copy 56045/680

December 8, 1942

Mr. Abner Green, Secretary
American Committee for
Protection of Foreign Born
2 West 43rd Street
New York, New York

My dear Mr. Green:

Reference is made to your letter of November 18, 1942 relative to members of the International Workers Order, whose petitions for naturalization are alleged to have been delayed by this Service because of their membership in this organization, and your letter of November 20, 1942 concerning the complaint of Paul Purola of Baie de Wasai, Michigan.

You are advised that instructions are now being prepared for the field offices of this Service not to object to

the granting of any petition for naturalization solely on the ground that petitioner is, or was, a member of, or affiliated with, the International Workers Order. The District Director in New York has already been advised of this instruction and the District Director at Detroit, Michigan, having jurisdiction over Baie de Wasai, Michigan, is being advised today concerning this matter.

The District Director at Detroit, Michigan, has been called upon to submit a report in the case of Paul Purola and when received you will be further advised concerning this case.

Sincerely yours,
/s/ EARL G. HARRISON
Commissioner

32 **Exhibit G**

"P. S. S-613, February 4, 1948

In response to numerous inquiries as to the policy of the Bureau of Internal Revenue regarding subversive organizations, George J. Schoeneman, Commissioner of Internal Revenue, today issued the following statement:

'The tax laws do not contemplate and it has never been our policy to grant tax exemption or other tax privileges to subversive organizations. Whenever we discover an organization that obtained exemption by misrepresenting its purposes and activities, we revoke these privileges immediately.

'We have, for instance, noticed public comment regarding the fact that the Attorney General has declared subversive certain organizations which had at various times in the past obtained exempt status under the guise of charitable, educational, fraternal or similar bona fide organizations.

'The exemption of one of these organizations, the International Workers Order, was revoked on February 27, 1947, and the exemption of the Joint Anti-Fascist Refugee Committee was revoked on January 22, 1948. Revocation of the exemptions of six other organizations on the Attorney General's list has now been made. These organizations are the National Council of American-Soviet Friendship, Hollywood Writers' Mobilization, Ohio School of Social Science, Samuel Adams School, School of Jewish Studies (New York City), and Philadelphia School of Social Science and Art.

'Revocation of the exemption of the above-named organizations will preclude any allowance of deductions in tax returns for contributions made to them.

'It is the policy of the Bureau to take steps promptly to deny exemption to any organization where evidence demonstrates it to be subversive.' "

33 Filed Feb 18 1949

Motion for Leave to Intervene and to Add Defendants

Now comes Arthur Lowndes Drayton and moves this Court pursuant to Rule 20 and Rule 24(b) of the Federal Rules of Civil Procedure to be permitted to intervene as a plaintiff in this action and to join E. B. Jackson, individually and as Chairman, and Roy C. Frank and Hugh E. Alford, individually and as members of Loyalty Board of the Post Office Department, as defendants and to plead the supplementary cause of action set forth in the proposed supplemental and amended complaint hereto attached entitled "As and for a cause of action in behalf of plaintiff Arthur Lowndes Drayton against all of the defend-

34 ants", on the grounds that (1) applicant's claim and the main action have questions of law and fact in common, and (2) there is asserted against the proposed defendants a right of relief arising out of the same transaction, occurrence or series of actions and occurrences.

Plaintiff International Workers Order, Inc. joins in this motion.

Dated: February 17, 1949.

LEE PRESSMAN
9 East 40th Street
New York 16, New York

ALLAN R. ROSENBERG
934 Bowen Building
Washington, D. C.
Attorneys for International Workers Order, Inc.

MORRIS SHAFRITZ
1612 Market Street
Philadelphia, Pa.
Attorney for Arthur Lowndes Drayton

35 Filed Feb 18 1949

Supplemental and Amended Complaint

Plaintiffs, by their atforneys, Lee Pressman, Morris Shafritz, and Allen R. Rosenberg, complaining of the defendants, respectfully show to this Court and allege:

I. JURISDICTIONAL ALLEGATIONS.

1. This is a suit of a civil nature seeking a declaratory judgment, decree and injunction. This suit arises under the Constitution and laws of the United States and is brought to redress and prevent the deprivation, under color of alleged authority, of rights, privileges and immunities secured under the Constitution and laws of the United

States, including Article III and Amendments I, V, IX and X, of the Constitution, all as hereinafter more fully appears.

2. The matter in controversy exceeds the value of three thousand dollars. This Court has jurisdiction under sections 11-301, 11-305 and 11-306 of the District of Columbia Code, and also under Title 28, chapters 85 and 151 of the United States Code.

II. The Purposes of this Action.

1. On November 24, 1947, defendant Tom C. Clark, as Attorney General, in a letter to defendant Seth W. Richardson, as Chairman of the Loyalty Review Board of the Civil Service Commission, under color of Executive Order No. 9835, dated March 21, 1947, designated approximately 90 organizations, including plaintiff International
36 Workers Order, Inc. (herein called the Order) as "subversive" organizations. Such designation is herein referred to as the "list". The inclusion of such plaintiff's name upon the list was without any notice or any opportunity to such plaintiff to be heard and was without authority in law or basis in fact and operated and is now operating to deprive plaintiff Order of rights and property without due process of law.

2. Defendants have published and circulated said list and have represented and caused it to be accepted as an authoritative, conclusive adjudication of the status, rights and character of plaintiff Order binding upon all other federal agencies and have used and threaten to use it to invade and destroy certain rights guaranted under the Constitution and laws of the United States to plaintiffs and to the members of plaintiff Order.

3. The purpose of this action is to restrain defendants from acting or purporting to act upon the basis of such purported adjudication of the status, rights and character of the Order, the inclusion of its name in such list of alleged

"subversive" organizations or its "designation" as such an organization; to restrain defendants from declaring, circulating or publishing such plaintiff's name as that of a "subversive" organization or from discharging or instigating the discharge or the preferment of charges looking to the dismissal from government service of plaintiff Drayton or other members of plaintiff Order because of their membership in such Order.

A. AS AND FOR A CAUSE OF ACTION IN BEHALF OF INTERNATIONAL WORKERS ORDER, INC. AGAINST DEFENDANTS CLARK, RICHARDSON, ALGER, AMEN, BIGELOW, BRUMBAUGH, CLARK, COLMERY, DAVIS, FRENCH, GLASS, HARRISON, HEBERT, HOAG, LA ROE, LEE, MacMAHON, MERRIAM, PARKMAN, SEASONGOOD, SHATTUCK AND SIBLEY.

III. The Parties.

1. Defendant Tom C. Clark is the Attorney General of the United States and is found within the District of Columbia.

2. Defendant Seth W. Richardson is the Chairman of the Loyalty Review Board of the Civil Service Commission, and defendants George W. Alger, John Harlan Amen, Harry A. Bigelow, Aaron J. Brumbaugh, John Kirkland Clark, Harry Colmery, Tom J. Davis, Burton L. French, Meta Glass, Earl Harrison, Paul M. Hebert, Garret Hoag, Wilbur LaRoe, Jr., Lawrence T. Lee, Arthur W.
37 MacMahon, Charles E. Merriam, Henry Parkman, Jr., Murray Seasongood, Harry L. Shattuck and Mrs. Harper Sibley are the other members of that Board. The Loyalty Review Board is located in the District of Columbia and each of the members thereof is to be found within the District of Columbia.

3. Plaintiff International Workers Order, Inc. is a fraternal benefit society, duly organized on March 28, 1930, as a corporation without capital stock under Article 7 of

the Insurance Law of the State of New York, operating for the mutual benefit of its members and their beneficiaries and not for profit. It is licensed and duly authorized to operate and operates in the District of Columbia and eighteen states. At the time of the promulgation of the list, the Order had approximately 185,000 members, including among them employees of the federal government and various States and municipalities.

4. The officers of the Order are General President, Rockwell Kent; General Vice-Presidents, John E. Middleton, Louise Thompson, Rubin Saltzman, Vito Marcantonio, Bronislav Wojkowski; General Secretary-Treasurer, Peter Shipka; General Recording Secretary, David Greene; General Trustees, Herman Seligson, Harry Lubeshkoff, Dr. Luther Peck, Michael Tkach, Anthony Gerlach.

5. The purposes and objects for which the Order was formed are as set forth in its Certificate of Incorporation and Certificate of Amendment of Charter, and are as follows:

"To promote fraternal intercourse among the members; to assist its members in cases of sickness or disability and their families dependent upon them in need and distress resulting from such sickness and disability of such members; to carry on altruistic, educational, fraternal and recreational activities for the benefit of its members; to further benevolence and to allay poverty amongst those that are dependent upon its members for their maintenance and support by establishing a sick fund and also a beneficiary fund, from which, upon the death of any member in good standing, the beneficiary named in the membership certificate or policy issued to the deceased member shall draw an amount not exceeding the sum designated therein; the limit of death benefit payable under any individual membership certificate or policy shall not exceed five thousand dollars."

6. The Order operates on the lodge system and has a representative form of government as defined by Section 452 of the Insurance Law of the State of New York. It has a Constitution and By-laws, a copy of which is annexed hereto as Exhibit "A." Under the provisions of its
38 Constitution and By-laws, local lodges may be organized in any locality where there are at least fifteen acceptable candidates who apply for admission.

7. The Order consists of approximately 1860 lodges, located in the following States and the District of Columbia:

	Number of Lodges
California	77
Colorado	9
Connecticut	66
District of Columbia	4
Illinois	121
Indiana	35
Louisiana	1
Maryland	12
Massachusetts	69
Michigan	112
Minnesota	26
Montana	4
New Jersey	174
New York	355
Ohio	204
Pennsylvania	424
Rhode Island	12
Washington	14
West Virginia	51

Application for membership is made through its lodges. Applicants for membership are entitled to apply for up to $1,000 of life insurance without medical examination, if under forty-five years of age, and subject to medical exam-

ination if older. Additional insurance is available subject to medical examination. Sick benefits up to $10. per week are similarly available without medical examination and up to $15. per week, subject to such examination. The Order also offers disability and tuberculosis benefits. Each member receives an insurance policy covering the kind of insurance issued to him. The various options and schedule of premium payments are set forth in the Constitution and By-laws of the Order.

8. Each member pays monthly dues. Such dues are made up of separate items covering dues for the various benefits which the member carries, and an item for general expense. The dues paid for benefits are segregated by the Order and placed in a separate benefit account, the accounts for the various benefits being segregated. The dues paid for expenses are segregated by the Order and placed in the general expense fund. The Order does not use any special fund placed in the mortuary, juvenile insurance, and sick benefit funds for any purpose other than payment of the benefits which those funds are set up to cover.

39 9. The Order functions as an interracial federation of national group societies to which its members belong according to their national origin or descent. The Order is the only interracial, fraternal benefit organization in the United States which forbids discrimination and segregation in its organization and which welcomes the Negro people into membership. The nationalities represented in its societies are Carpatho-Russia, Croatian, Czech, Finnish, Greek, Hungarian, Italian, Jewish, Polish, Romanian, Russian, Serbian, Slovak, Spanish and Ukrainian. In addition, there are affiliated several hundred general lodges of varied national group composition.

IV. Plaintiff's Activities and Rights Affected.

1. In the furtherance of its fraternal, cultural, altruistic and patriotic objectives:

a) The Order affords to its members and their families, low cost, non-profit, sickness and death benefits and has, during the approximately seventeen years of its existence paid to its members in excess of eleven million dollars in benefits of which over five million dollars were for sick benefits and over five million dollars for death benefits. Life Insurance protection carried by its membership is in excess of one hundred twenty million dollars ($120,000,000.) and it has assets of approximately five million dollars ($5,000,000.) in a ratio of 145% to liabilities, or forty-five percent (45%) in excess of insurance law requirements. In addition, the Order, through its lodges, provides other aid and comfort to its members in case of distress.

b) The Order attempts to encourage the preservation of the cultural heritages and artistic values developed over the years and through the generations by the peoples of the different countries of the world and brought with them to the United States. The Order has accordingly fostered and encouraged various cultural and educational programs designed to preserve such cultures and values and to obtain their integration upon a basis of equality into American life.

c) The Order sponsors and promotes citizenship and civic classes and the participation of its members in civic and patriotic activities; relief and welfare work, recreational, sports and athletic activities and related programs to improve the cultural, moral and physical status of its members, their families and the communities in which they live.

d) During World War II, the treasuries of the Order and its subordinate bodies were invested to the hilt for the purchase of war bonds and its membership was constantly urged and encouraged to invest its income similarly. Approximately thirty million dollars ($30,000,000.) worth of war bonds were purchased by members of the Order and the Order and its subordinates received numer-

ous commendations, certificates and awards for its patriotic participation in such activity.

e) Approximately ten thousand (10,000) members of the Order and fifteen thousand (15,000) husbands, sons and daughters of members of the Order served in the Armed Forces of the United States during World War II, not including service in the Merchant Marine. More than three hundred members of the Order were killed in action and hundreds more suffered wounds and received citations and medals for valor.

f) More than ten million dollars in cash and goods for war relief to American and Allied war relief agencies and for rehabilitation of occupied lands in Europe were raised and distributed under auspices of the Order.

g) The Order sponsored donations of blood to the blood banks in which thousands of its members participated.

h) The Order actively participated in civilian defense and morale activities by issuing pamphlets, leaflets, instructions in English and foreign languages to obtain maximum involvement and unity for the successful prosecution of the war.

i) The Order organized knitting clubs from among its women members, which furnished over fifteen thousand woolen garments for the American and Allied armies.

j) The Order presented hundreds of radios, victrolas, and millions of cigarettes to the Armed Forces.

k) The Order enlisted in the war against waste and engaged actively in the various scrap collection drives.

l) At all times since its formation and particularly during the war, it exerted and exerts every effort to
41 build national unity amongst the different nationalities which make up the United States.

m) The Order has sponsored national baseball, soft-ball, boxing, bowling, soccer, ping-pong, swimming and other tournaments and has organized outings, hiking, track and field events, outdoor and indoor games and the like.

n) It has encouraged the development of groups in dramatics, choruses, social and interpretive dancing, orchestras, bands and photography.

o) It has actively supported, on a non-political, nonpartisan basis, social security legislation for improved old age and retirement benefits, unemployment insurance, housing, price and rent control, health services and insurance, educational facilities, and the like and has sought to enhance the democratic values of the country by fighting discrimination, restrictions on civil rights and any undemocratic and liberty- and freedom-restricting proposals.

2. The Order is not subject to the instruction, direction or will of any individual or group of individuals, any organization or party, of whatsoever kind, nature or description, other than its own membership. Membership is open to "mentally sound and of good moral character from the age of sixteen up, regardless of nationality, religion, race, sex, color and political opinion." Power and authority rests with the membership, which functions through democratically elected officials, subject to the control and discipline of the membership and their duly elected representatives at stated national conventions.

3. Adherence to the democratic processes of the Order prescribed in its Charter and Constitution and By-laws is and at all times has been strictly supervised by the various Insurance Departments of the several states in which the Order carries on its business and activities. The Order files and since its formation has filed a comprehensive annual report in each of the states in which it is licensed to function. Periodic examinations of the Order have been made and are made by the New York State Insurance Department, as well as by other States in which it is licensed.

4. Prior to the action of the defendants herein complained of, the activities of the Order had, from time
42 to time, in addition to the scrutiny and supervision of the Insurance Departments of the States in which it functions, been the subject of administrative and judicial

proceedings. As a result of such proceedings, held on notice to the Order, the purposes and activities of the Order have been held to be free from any illegal or improper taint and not such as would bar members therein from the enjoyment of any rights, privileges or immunities. Among such decisions and rulings are the following:

a) An opinion by Gerard Reilly, Esq., as Solicitor of the Department of Labor, concurred in by the Commissioner of Immigration and Naturalization, dated March 7, 1939, a copy of which is annexed hereto as Exhibit "B," that "there was nothing in the record to indicate that membership in the International Workers Order was a ground for recommending to the courts against naturalization."

b) A ruling by the Commissioner of Immigration and Naturalization of the United States Department of Labor, dated March 21, 1938, a photostatic copy of which is attached as Exhibit "C," that the Service "would not be warranted in opposing the naturalization of an individual" because of membership in the Order.

c) Findings, ruling and an order made on March 6, 1939 by the Supreme Judicial Court of the Commonwealth of Massachusetts in an action entitled, "International Workers Order, Inc. vs. Commissioner of Insurance of the Commonwealth of Massachusetts," bearing equity Number 63127, a copy of which is attached hereto as Exhibit "D," anulling the refusal of the Commissioner of Insurance to renew the license of the Order.

d) An opinion from the United States Civil Service Commission dated September 16, 1943, that "membership in, or activity in behalf of, the International Workers Order, standing alone, has in no case been regarded by the Commission as rendering a person unsuitable for government employment." A copy of such opinion is annexed hereto as Exhibit "E."

e) A ruling of the Commissioner of Immigration and Naturalization Service of the Department of Justice, dated December 8, 1942, that the field offices of the Service were

instructed "not to object to the granting of any peti-
43 tion for naturalization solely on the ground that petitioner is, or was, a member of, or affiliated with the International Workers Order." A photostatic copy of this ruling is attached as Exhibit "F."

f) Findings of fact made in April, 1943, by the Board of Immigration Appeals of the United States Department of Justice over the signature of its chairman, Honorable Thomas J. Finucane in the proceeding bearing case No. 56127/428 N. Y., as follows:

"That the International Workers Order does not write, circulate, distribute, or display, or cause to be written, circulated, distributed, printed, published, or displayed, or have in its possession, for the purpose of circulation, distribution, publication, issue or display, written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, or of all forms of law, or the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the Government of the United States or of any other organized government or the unlawful damage, injury, or destruction of property or sabotage, or that it ever has done any of those things."

On the basis of which findings the Board concluded:

"(1) That the International Workers Order is not an organization prescribed by Sections (d) and (e) of the Act of 1918, as amended.

"(2) That under the Act of October 16, 1918, as amended, the applicant is not excludable as an alien who is or has been a member of or affiliated with an organization which believes in, advises, and teaches the overthrow by force and violence of the Government of the United States."

(g) Orders of the Honorable Clarence E. Galston, Judge of the United States District Court, Eastern District of New York on May 27, 1943, granting naturalization peti-

tions No. 339363, 343677, 342819 and 339371, notwithstanding membership in the Order.

h) Other orders, ruling and decisions of similar import.

5. As a result of its activities, the Order has merited and has received numerous commendations, citations, certificates and awards from numerous officials in federal, state and municipal governments for outstanding patriotic voluntary service, for generosity, cooperation, for its constructive efforts and attainments, and its invaluable and splendid help and work was well and favorably known in the United States as a patriotic fraternal, altruistic, benevolent and democratic organization, and as an exponent of the highest ideals of fraternalism and democracy, and had the friendship and support of numerous persons in
44 the fields of public affairs, labor, the arts, sciences, and other professions and of other persons and organizations in the democratic movement of the United States and throughout the world.

6. The Order expended and expends annually substantial sums of money for the promotion of its activities and for the expansion and growth of its organization and the good name and repute which it held and enjoyed were and are necessary to its successful functioning.

7. The objectives and activities of the Order are an exercise of the rights of assembly, speech, press and petition and the Order is composed of persons who have assembled and associated together and are assembling and associating together for mutual betterment, protection and assistance and for the betterment and improvement of the communities and country in which they reside.

8. The purposes, objectives and activities of the Order are in no sense subversive. The Order is not an organization within the meaning of Part III, Section 3 of Executive Order No. 9835, and it has not adopted a policy of advocating or approving the commission of acts of force or violence, or to deny other persons the rights under the Constitution or as seeking to alter the form of government by

unconstitutional means, but on the contrary, the Order is opposed to the commission of acts of force or violence, fights against the denial of rights to any person, and is opposed to the altering of our form of government by any illegal or unconstitutional means. The Order is dedicated to the democratic ideals and traditions of the United States and the principles of freedom and equality embodied in the Constitution.

V. The Acts of Defendants Complained of.

1. On or about March 25, 1947, the President of the United States issued Executive Order No. 9835, published at page 1935 of volume 12 of the Federal Register.

2. Executive Order No. 9835 recites that it was issued by the President:

". . . by virtue of the authority vested in me by the Constitution and the statutes of the United States, including the Civil Service Act of 1883 (22 Stat. 403), as amended, and Section 9A of the act approved August 2, 1939 (18 U. S. C. 61 i), and as President and Chief Executive of the United States. . . ."

45 3. Said Executive Order provided, generally, for "loyalty investigations" of civilian employees in the Executive Branch of the Federal Government and of applicants for civil employment in the Executive Branch of the Federal Government.

4. Part III, section 1 of said Executive Order No. 9835 provided for the establishment of a Civil Service Commission Loyalty Review Board and pursuant thereto such a Board was established and the chairman and members thereof appointed by the President of the United States on or about November 8, 1947.

5. Part V, section 2(f) of said Executive Order No. 9835 specified the activities and associations of an applicant for employment with the Federal Government or of an employee of the Federal Government which may be considered

in connection with the determination of disloyalty of the applicant or employee.

6. Part III, section 3 of said Executive Order No. 9835 further provided that the Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination designates as disloyal and that the Loyalty Review Board shall disseminate such information to all departments and agencies.

7. In a letter dated November 24, 1947, from the defendant Tom C. Clark to the defendant Seth W. Richardson, purportedly submitted pursuant to Part III, section 3 of Executive Order No. 9835, ninety organizations including the Order, were designated by the Department of Justice as falling within Part III, section 3 of said Executive Order.

8. The Order never received any notice or hearing with respect to the aforesaid designation.

9. On or about December 4, 1947, the defendant Seth W. Richardson sent the aforesaid letter together with the list of designated organizations to the local departments and agencies which assist in the administration of Executive Order No. 9835 and on or about the same time the aforesaid letter was released to and widely publicized by the public press.

10. Upon information and belief, the designation of the Order by the defendant Clark was intended by him
46 to be in the nature of a binding and conclusive adjudication of the status, rights and character of the Order and was intended by him, under and with the color of authority, to affect the rights and property of the Order, and such designation has affected and does affect the rights and property of the Order and has caused and will continue to cause the Order substantial property and other injury as set forth in paragraph 12.

11. Upon information and belief, the dissemination of said designation by defendant Richardson and the other defendants constituting the Loyalty Review Board of the United States Civil Service Commission to other federal agencies and to the public is intended to convey to such other federal agencies the knowledge that an authoritative determination, binding and conclusive upon them, has been made in accordance with lawful authority and in consonance with due process of law, with respect to the status, rights and character of the Order and that such agencies are expected and required to be bound thereby, and is thereby intended to have and does have a direct and immediate effect upon the operation and function of the Order and upon its rights guaranteed against abridgement by the Constitution and results in a deprivation of its property without due process of law and has caused and will cause the Order substantial property and other injury.

12. Upon information and belief, as a result of the aforesaid acts of defendants:

a) On February 4, 1948, the Commissioner of Internal Revenue rescinded the ruling that the Order had a tax exempt status solely by reason of the purported and intended binding effect of the designation of the Order by defendant Clark.

b) On April 27, 1948, the Commissioner of Internal Revenue revoked the ruling made March 11, 1943, that the Relief and Rehabilitation Fund of the Order (known during the war as the Front Line Fighters Fund) was tax exempt solely by reason of the purported and intended binding effect of such designation by defendant Clark.

c) On April 27, 1948, the Commissioner of Internal Revenue revoked the ruling made December 14, 1942, that the National School and Cultural Committee of the Jewish Peoples Fraternal Order, of the Order, was a tax exempt organization solely by reason of the purported and intended binding effect of such designation by defendant Clark.

47

d) The Order operates under the supervision of various Departments of Insurance in several states. Such departments are notably sensitive to allegations of misconduct or impropriety on the part of organizations subject to their jurisdiction. Solely as a result of defendants' acts officials in such departments, as well as other state officials, have been instigated and inspired to institute investigations and proceedings to rescind the various charters, licenses, franchises, privileges and authority possessed by the Order which are valuable and necessary to its function in the States. Such investigations and proceedings have subjected and will continue to subject the Order to substantial cost and expense and to harassment and interference with its normal and proper operations and have jeopardized and will jeopardize the valuable property interests which it has in such charters, licenses, franchises, privileges and authority.

e) Many members, especially present and prospective civil servants, have resigned or withdrawn from membership in the Order.

f) Many potential members, especially present and prospective civil servants, have declined and will continue to decline to become members of the Order.

g) Members of the Order in government service have been subjected to charges of disloyalty and to dismissal because of their membership in the Order and in ensuing dismissal proceedings federal employing agencies have held and proceeded upon the basis that the designation of the Order constituted a determination in the nature of an adjudication concerning the status, rights and character of the Order which was binding and conclusive upon them.

h) Members of the Order who have pending petitions for naturalization have been denied naturalization or have had their petitions held in abeyance because of their membership in the Order solely because the Department of justice, headed by defendant Clark, regards the designation as con-

clusive, final and not subject to reopening or hearing in such proceedings.

48 i) Subordinate bodies of the Order have been hampered and will continue to be hampered in obtaining the use of private homes and in renting halls and similar places for the conduct of meetings, rallies, social and recreational affairs necessary for the proper functioning of the Order.

j) The Order and its members have been vilified and been subjected to criminal taint and the equivalent of criminal punishment by reason of the designation of the Order by name as subversive under the color of authority and have suffered and will continue to suffer public shame, disgrace, ridicule and obliquy, and economic coercion and injury.

l) Many employers in private industry, having contracts with the Army or the Navy, and other governmental agencies, have advised employees who are members of the Order or whose parents or relatives are members of the Order that because of such membership, such employees are undesirable, and such employees have been and are in the process of being discharged by such employers, said discharges having been made or instigated at the behest of the Army or Navy, and other governmental agencies.

m) The New York City Board of Education has revoked the license of the Jewish People's Fraternal Order, an affiliate of the Order, for the use of public school buildings in New York City to conduct classes for children out of school hours, the basis for such revocation being the designation and publication by the defendants of the "list" described in Paragraph II subsections 1, 2 and 3 and Paragraph V subsections 7, 8 and 9 hereof.

13. The designation of the Order as one of the prescribed organizations under the said Executive Order No. 9835 is without the slightest basis in truth or in fact and was made without notice or opportunity to be heard, without findings of fact or conclusions of law and without any prior or ac-

companying statement or explanation of the basis of the designation and defendants have caused all other federal agencies to accept such designation as a binding and conclusive adjudication of the status, character and rights of the Order and to deny to the Order and to its members any right or opportunity to be heard on the true status and character of the Order, resulting in a deprivation of rights and property of the Order without any opportunity at any time or under any circumstances to be heard.

14. The actions of defendants deny, impair and previously restrain the Order and its members from accomplishing their lawful and proper objectives in assembling and associating together and in exercising the rights of speech, press and petition while so assembled, guaranteed against invasion under the First Amendment and deprive the Order and its members of the benefits and privileges of mutual association and assembly and of the mutual obligations heretofore assumed by its members in such association and assembly as guaranteed by the First Amendment.

15. The aforesaid actions taken by defendants were unauthorized and without warrant in law and amount to a deprivation of the rights of the Order and of its
49 members in violation of the Constitution of the United States.

16. Section 9A of the Hatch Act enacted August 2, 1939 (53 Stat. 1148, 18 U. S. C. A. 61 i) as construed and applied herein by Executive Order No. 9835 is unconstitutional and void for the following reasons:

a) It is repugnant to the Constitution of the United States as a deprivation of freedom of speech, of the press, and of assembly and association of the Order and its members in violation of the First Amendment of the United States Constitution.

b) It is repugnant to the Constitution of the United States as a deprivation of liberty and property of the Order and of its members without due process of law in violation of the Fifth Amendment of the United States Constitution.

c) It is repugnant to the Constitution of the United States as a deprivation of the fundamental rights of the Order and of its members reserved to the people of the United States by the Ninth and Tenth Amendments of the United States Constitution.

17. Executive Order No. 9835 on its face and as construed and applied herein by defendants exceeds the powers vested in the President by the United States Constitution and is null and void for the following reasons:

a) It is repugnant to the Constitution of the United States as a deprivation of freedom of speech, of the press, and of assembly and association of the Order and its members in violation of the First Amendment and the Fifth Amendment of the United States Constitution.

b) It is repugnant to the Constitution of the United States as a deprivation of liberty and property of the Order and its members without due process of law in violation of the Fifth Amendment of the United States Constitution.

c) It is repugnant to the Constitution of the United States as a deprivation of the fundamental rights of the Order and its members reserved to the people of the United States by the Ninth and Tenth Amendment of the United States Constitution.

50 d) It is repugnant to Article III of the Constitution which vests the judicial power of the United States in the courts.

18. There exists between plaintiff and the defendants herein an actual controversy, and plaintiff has instituted this action for the purpose, among others, of having Section 9A of the Hatch Act as construed and applied by Executive Order No. 9835 and said Executive Order No. 9835 on its face as construed and applied by defendants declared unconstitutional as hereinbefore more particularly set forth.

19. A delay in ascertaining and determining the rights of the Order and of its members will result in further serious and irreparable loss and damage to it, and this loss and

damage are and will be irremedial unless relief is granted by this Court. Plaintiff has no remedy by administrative review or appeal for the reason that defendants refuse to accord to it any hearing or to indicate to it any basis or reason for the designation and for the further reason that other federal agencies similarly refuse any hearing to the Order on the ground that they are bound and concluded by the designation. There is no other remedy afforded by law or statute against the illegal acts and conduct of defendants, save the equity powers of this Court, and unless the relief prayed for is granted, plaintiff will suffer irreparable loss and damage.

20. By reason of the premises the Order is entitled to relief against the defendants under the Federal Declaratory Judgment Act of June 14, 1934, Title 28, U. S. Code, Chapter 151, and under the Constitution of the United States.

21. The damage to the Order above described will continue unless and until the defendants are enjoined from publicizing and sending to departments and agencies in the Executive Branch of the Federal Government the name of plaintiff as a desginated organization with the concomitant connotation that such designation is a binding and conclusive determination of the status, rights and character of the Order, and are directed to remove plaintiff's name from the list already circulated and issued, and are directed further to make known this action in the same manner in which they made known the inclusion of plaintiff's
51 name on the above mentioned list, and are directed further to take no action which may be based upon the inclusion of plaintiff's name in the aforesaid list.

22. Plaintiff has no adequate remedy at law.

23. Greater injury will be caused to plaintiff by the denial of the relief here prayed for than will be caused to defendants by the granting thereof.

B. AS AND FOR A CAUSE OF ACTION IN BEHALF OF PLAINTIFF ARTHUR LOWNDES DRAYTON AGAINST ALL OF THE DEFENDANTS.

VI. The Parties.

1. Plaintiff repeats and realleges the allegations of paragraphs 1 and 2 of Section III of this complaint.

2. Defendant E. B. Jackson is the Chairman and defendant, Roy C. Frank and Hugh E. Alford are the other members of the Loyalty Board of the Post Office Department, established to administer the socalled loyalty program provided by Executive Order No. 9835 within such agency. Such board and each of the members thereof are located within the District of Columbia.

3. Plaintiff is a citizen of the United States, a resident of Philadelphia, Pennsylvania, and is and for more than twenty four years has been employed by the Post Office Department as a postal clerk. Plaintiff's position is under the classified civil service.

VII. The Activities and Rights Affected.

1. Plaintiff repeats and realleges the allegations of paragraphs 3 through 9 of Section III and the allegations of each of the paragraphs contained in Section IV of this complaint.

2. In the discharge of his duties of citizenship and in exercise of his constitutional rights of freedom of speech, of press, of assembly and of petition, and for the aid, protection, security, improvement and betterment of his status, plaintiff now is and has been a member in good standing of the International Workers Order, Inc.

52 3. Plaintiff now carries and for some years last past has carried life insurance protection and other benefits in the Order and has otherwise benefitted from his membership therein by reason of the fraternal, social, cultural and patriotic facilities which it provides and the functions in which it engages and which are more fully described above.

VIII. The Acts of Defendants Complained of.

1. Plaintiff repeats and realleges the allegations of Section V of this complaint.

2. Plaintiff desires and intends to continue his membership in the Order so that he may continue to receive the security, fraternalism, social benefits, which it affords and the civic and patriotic outlets which it provides and the other benefits which are derived from membership therein.

3. Upon information and belief, the defendants Clark, Richardson and the other members of the Loyalty Review Board of the United States Civil Service Commission have caused the defendants Jackson, Frank and Alford constituting the Loyalty Board of the Post Office Department to institute, and such defendants have instituted proceedings against plaintiff to procure his dismissal from the federal civil service because of "disloyalty" evidenced by his membership in the Order. Charges to this effect dated January 13, 1949 have been preferred against plaintiff, although a date for hearing on such charges has not yet been fixed.

4. In the so-called loyalty hearing which will be accorded to plaintiff by the defendants constituting the Loyalty Board of the Post Office Department, the defendants Clark, Richardson and other members of the Loyalty Review Board of the United States Civil Service have advised and directed all other agencies and departments of the Federal Government that the designation of the Order as "subversive" is final, binding and conclusive on them. Therefore at the hearing to be accorded to plaintiff by the defendants constituting the Loyalty Board of the Post Office Department or their agents, said designation will not be subject to inquiry, review or evidence or testimony by said plaintiff.

53 5. Upon information and belief defendants have caused the dismissal of all federal employees who after notice of the designation made ex parte and without notice as aforesaid have expressed their desire and inten-

tion to exercise their rights of freedom of association by continuing their membership in the Order and plaintiff's dismissal is inevitable and certain under the practices and procedures established by defendants in view of his expression of such desire and intention. Plaintiff has no administrative remedy since all of the defendants hold that the designation of the Order is final and conclusive with respect to the status, character and rights of the Order not only as to them but as to plaintiff as well and that plaintiff may not at any state of the administrative process be heard with respect thereto. Plaintiff is imminently subject to the imposition of a penalty by virtue of the illegal acts of defendants and will have no remedy if the defendants are not prevented from accomplishing such illegal dismissal of plaintiff from the classified federal civil service as disloyal because of his membership in the Order.

6. Such dismissal from the federal government, particularly for the reason of disloyalty flowing from membership in a designated organization, would be equivalent to a criminal stigmatization of plaintiff and would result in his disqualification not only from public employment but from private employment as well, and in social ostracism and economic isolation and would constitute immediate irreparable injury and hardship to plaintiff which would not be remediable by any remedy at law.

7. The acts of defendants have, in addition, operated to impair the value of the substantial and valuable benefits enjoyed by plaintiff from his membership in the Order and threaten to destroy them entirely.

8. Plaintiff has no adequate remedy at law.

9. Greater injury would be caused to plaintiff by the denial of the relief here prayed for than would be caused to defendants by the granting thereof.

54 WHEREFORE, plaintiffs pray judgment:

1. That Section 9A of the Hatch Act as construed and applied by Executive Order No. 9835 and by defendants is unconstitutional;

2. That Executive Order No. 9835 on its face and as construed and applied by defendants is unconstitutional;

3. That defendants and their officers, agents, and employees be enjoined from designating, circulating or publicizing the name of International Workers Order, Inc. as a designated organization; and that defendants and their officers, agents and employees be directed to remove the name of International Workers Order, Inc. from the list of designated organizations already circulated, issued and published, and to make a public statement of this removal; and that defendants and their officers, agents, and employees be directed to take no action which may be based upon the inclusion of such plaintiff's name in the list of designated organizations;

4. That defendants, their officers, agents and employees be enjoined from dismissing or instigating the dismissal or the preferment of charges for the dismissal of plaintiff Arthur Lowndes Drayton from his position in the classified federal civil service because of his membership in the International Workers Order, Inc.

5. For such other and further relief as this Court may deem proper.

February 17, 1949.

/s/ Lee Pressman
9 East 40th Street
New York 16, New York

/s/ Morris Shafritz
1612 Market Street
Philadelphia, Pa.

/s/ Allan R. Rosenberg
934 Bowen Building
Washington, D. C.
Attorneys for Plaintiffs

* * * * * * * * * * *

[Exhibits A-G are omitted at this point since they are identical with Exhibits attached to the Second Amended Complaint.]

164 Filed Feb 23 1949

Motion to Dismiss Supplemental and Amended Complaint or in the Alternative a Motion to Strike Supplemental and Amended Complaint

Come now the defendants by their attorney, George Morris Fay, United States Attorney, and move to dismiss the supplemental and amended complaint filed herein for the following reasons:

1. The complaint does not state a claim upon which relief can be granted.

2. This complaint is the second amendment to the original complaint and has been filed without leave of court in violation of Federal Rule 15(a).

GEORGE MORRIS FAY
United States Attorney
ROSS O'DONOGHUE
Asst. United States Attorney
STAFFORD R. GRADY
Asst. United States Attorney

165 Filed Feb 23 1949

Opposition to Motion for Leave to Intervene and Add Defendants

Come now the defendants by their attorney, George Morris Fay, the United States Attorney, and opposes plaintiff's motion for leave to intervene and add defendants upon the ground that such intervention would be a violation of the Federal Rules of civil procedure.

GEORGE MORRIS FAY
United States Attorney
ROSS O'DONOGHUE
Asst. United States Attorney
STAFFORD R. GRADY
Asst. United States Attorney

Filed Apr 12, 1949

166

Memorandum Opinion

Motion to dismiss granted.

Plaintiff has no standing to sue. It is hornbook law that in order to maintain an action of an equitable character, plaintiff must show an unlawful invasion of some legally protected right. Stark v. Wickard, 321 U. S. 288, 1944. And it is equally true that not all governmental action, harmful though it admittedly may be to particular individuals, is susceptible of judicial review. Perkins v. Lukens Steel Co., 310 U. S. 112, 125; Tennessee Power Company v. T. V. A., 306 U. S. 118, 137, and see particularly Standard Scale Company v. Farrell, 249 U. S. 571.

Columbia Broadcasting System v. U. S., 316 U. S. 407, relied upon heavily by the plaintiff is distinguishable. There the Court held that the administrative exercise of rule-making power which purports to establish *controlling* (italics supplied) criteria for future administrative action is present regulation and reviewable as such under the Urgent Deficiencies Act. The Attoney General's action here establishes no such criteria. It merely sets up an evidentiary rule. See generally, Employers Group v. National War Labor Board, 143 Fed. 2d. 145, 1944, (App. D. C.), the language on p. 151 being particularly pertinent:

"Appellants' demand that we annul and enjoin the Board's order therefore amounts to a demand that we prevent the Board from giving the President advice which appellants contend would be erroneous. A court might as well be asked to prevent the Secretary of State or the Attorney General from giving alleged erroneous advice.***"

167 See also, United States v. Los Angeles Railroad, 273 U. S. 299, 310, 11, 12.

The motion for leave to intervene and to add defendants is denied.

* * * * * * * * * *

April 12, 1949.

MATTHEW F. McGUIRE,
Judge

This opinion is of this date amended by striking out the language so indicated above. The order of judgment is vacated and counsel are to submit a new order in that respect.

McGuire, J.
5/26/49

* * * * * * * * * * *

170 Filed May 27 1949

Stipulation

It is hereby stipulated by and between counsel for the plaintiffs and counsel for defendants:

1. That the appeal in the above entitled cause may be dismissed without prejudice.

2. That the orders made herein on April 19, 1949, may be vacated and new orders entered incorporating the amendment made May 26, 1949, to the Court's memorandum opinion, dated April 12, 1949.

3. That the filing of the second amended complaint by plaintiff, International Workers Order, Inc., herein, is hereby consented to, nunc pro tunc.

4. That defendant's motion to dismiss the supplemental and amended complaint be deemed nunc pro tunc addressed to the second amended complaint; as well as to the supplemental and amended complaint.

5. That an order may be entered upon this stipu-
171 lation without notice.

Allan R. Rosenberg,
Attorney for Plaintiffs.
George Morris Fay,
United States Attorney.
Joseph M. Howard,
Asst. United States Attorney,
Attorneys for Defendants.

* * * * * * * * * * *

172 Filed May 27 1949

Order

Upon the annexed written consent of the parties herein, it is by the Court this 27th day of May, 1949,

ORDERED that the stipulation between the parties, dated May 26, 1949, be, and the same hereby is, approved and ordered to be made a part of the record in this case; and it is hereby further

ORDERED that plaintiffs' motion for leave to intervene and to add defendants, the Court having heard argument of counsel and having considered the points and authorities filed in support thereof and in opposition thereto, and having vacated its previous order, dated the 19th day of April, 1949, be, and the same hereby is, denied; and it is further

ORDERED that defendants' motion to dismiss the second amended complaint, the Court having heard argument of counsel and having considered points and authorities, filed in support thereof and in opposition thereto, and having vacated its previous order dated the 19th day of April, 1949, and having this 26th day of May, 1949, amended its decision, dated April 12, 1949, be, and the same
173 hereby is, granted and the second amended complaint be, and the same hereby is, dismissed with prejudice; and it is further

ORDERED that the foregoing is without prejudice to plaintiffs' right to appeal from this order, in so far as it denies intervention and dismisses the second amended complaint.

MATTHEW F. MCGUIRE,
District Judge

* * * * * * * * * *

174 Filed May 27 1949

[fol. 61] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Nov. 18, 1949. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, OCTOBER TERM, 1949

No. 10,308

INTERNATIONAL WORKERS ORDER, INC., and ARTHUR LOWNDES DRAYTON, Appellants,

vs.

TOM C. CLARK, Individually and as Attorney General of the United States, et al., Appellees

Order

On consideration of appellants' motion to substitute J. Howard McGrath, present Attorney General of the United States, for appellee Tom C. Clark in this case, on the ground that appellee Clark has ceased to hold office as Attorney General and that J. Howard McGrath assumed office as Attorney General on August 20, 1949, and on the ground that there is substantial need for continuing and maintaining this action, and it appearing that J. Howard McGrath consents to the motion for substitution, It is

Ordered by the court that J. Howard McGrath, Attorney General of the United States, be, and he is hereby, substituted as appellee herein in the place and stead of appellee Tom C. Clark.

Per Curiam.

Dated November 18, 1949.

[fol. 62] Monday, December 5, 1949

October Term, 1949

No. 10308

INTERNATIONAL WORKERS ORDER, INC., and ARTHUR LOWNDES DRAYTON, Appellants,

v.

J. HOWARD MCGRATH, Individually and as Attorney General of the United States, et al.; Appellees

Before Honorable Henry W. Edgerton, Wilbur K. Miller, and James M. Proctor, Circuit Judges

Argument in the above entitled case was commenced by Mr. Lee Pressman, attorney for appellants, continued by Mr. L. Clark Ewing, attorney for appellees, and concluded by Mr. Pressman. Appellants allowed to submit copies of an opinion of a state court.

United States Court of Appeals

FOR THE

DISTRICT OF COLUMBIA CIRCUIT

No. 10308

INTERNATIONAL WORKERS ORDER, INC., and ARTHUR LOWNDES DRAYTON, APPELLANTS

v.

J. HOWARD MCGRATH, Individually and as Attorney General of the United States, et al., APPELLEES

Appeal from the United States District Court for the District of Columbia

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Argued December 5, 1949 Decided March 22, 1950

Mr. Lee Pressman, with whom *Mr. Allan R. Rosenberg* was on the brief, for appellants.

Mr. L. Clark Ewing, Assistant United States Attorney, with whom *Assistant Attorney General Morison* and *Messrs. George Morris Fay*, United States Attorney, *Edward H. Hickey*, Special Assistant to the Attorney General, *Stafford R. Grady*, Assistant United States Attorney, and *Joseph M. Howard*, Assistant United States Attorney, were on the brief, for appellees.

Before EDGERTON, WILBUR K. MILLER and PROCTOR, Circuit Judges.

WILBUR K. MILLER, *Circuit Judge:* The principal question in this case is whether a fraternal insurance company may maintain an action to review an intermediate step in the government's employee loyalty program on the ground that its constitutional rights were thereby invaded.

The loyalty program was initiated by Executive Order No. 9835, issued by the President on March 21, 1947,

> "... by virtue of the authority vested in me by the Constitution and statutes of the United States, including the Civil Service Act of 1883 (22 Stat. 403), as amended, and Section 9A of the [Hatch] act approved August 2, 1939 (18 U. S. C. 61i), and as President and Chief Executive of the United States ..."

Among the recitals and provisions of the Executive Order are the following:

> ". . . it is of vital importance that persons employed in the Federal service be of complete and unswerving loyalty to the United States . . .
>
> • • • •
>
> ". . . maximum protection must be afforded the United States against infiltration of disloyal persons into the ranks of its employees, and equal protection from unfounded accusations of disloyalty must be afforded the loyal employees of the Government . . .
>
> • • • •
>
> "There shall be a loyalty investigation of every person entering the civilian employment of any department or agency of the executive branch of the Federal Government.
>
> • • • •
>
> "The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group, or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.
>
> "a. The Loyalty Review Board shall disseminate such information to all departments and agencies."

The President's directive contains the further provision that among the activities and associations of an applicant or employee which may be considered in determining d loyalty are membership in, affiliation with or sympathetic association with, any organization designated as subversive by the Attorney General.

Acting under the instructions of the Executive Order and for the purpose of aiding in the attainment of its objectives, the Attorney General advised the Loyalty Review Board on November 24, 1947, that he had designated the appellant, International Workers Order, Inc. (IWO), as subversive.

After this designation had been made, IWO sued the Attorney General and the Loyalty Review Board in the United States District Court for the District of Columbia praying the court to declare unconstitutional § 9A of the Hatch Act as construed and applied by Executive Order No. 9835 and by the appellees, and praying the court also to hold the Executive Order unconstitutional, both on its face and as construed and applied by the appellees. Further relief sought was an injunctive order requiring the removal of IWO's name from the subversive list and restraining the appellees from further designating or publicizing IWO as a subversive organization.

The appellant, IWO, described itself in its complaint as a fraternal organization issuing policies of insurance to its members. It alleged that it was not afforded a hearing before it was branded as subversive by the Attorney General, that it is in fact not subversive, but that because of being designated as such it has lost certain tax exemptions, has been subjected to investigation by the insurance departments of certain states in which it issues policies of insurance, many of its members have resigned and cancelled their insurance, many prospective members have declined to join, and some members have been subjected to charges of disloyalty or have been dismissed from the government service because of their membership in the appellant organization. Other ill consequences were alleged at length.

Arthur L. Drayton, an employee of the Post Office Department, moved to be permitted to intervene as a plaintiff. He alleged he carried life insurance protection and other benefits in the appellant organization, and averred the Loyalty Board of the Post Office Department had instituted proceedings against him to procure his dismissal from the federal service because of alleged disloyalty said to be evidenced by his membership in IWO. In the intervening petition which he sought to file, Drayton prayed the same relief as that asked by IWO and sought to have the court enjoin the appellees from causing him to be dismissed because of his membership in IWO.

The District Court denied Drayton's motion for leave to intervene and, on appellees' motion, dismissed the complaint on the ground IWO had no standing to sue. Both IWO and Drayton appeal.

Distilled to its essence, IWO's complaint asked the District Court to review the Attorney General's unilateral action, taken under and for the purposes of the Executive Order, in designating it as subversive. Since that action was nothing more than a step in the executive department's loyalty screening program with respect to its employees—with no other direct objective or impact—IWO's real assertion is that it is constitutionally entitled to judicial scrutiny of a part of the government's decisional process on the question whether or not to decline to employ or to retain in its service any of IWO's members whom it suspects of disloyalty.

The appellant, IWO, strongly relies upon *Columbia Broadcasting System* v. *United States*, 316 U. S. 407 (1942), as authority for the reviewability of the Attorney General's designation in this case. The *Columbia Broadcasting* case was one in which the Federal Communications Commission adopted regulations prescribing rules which governed contractual relations between radio stations and the networks. If an applicant for a license had entered into an affiliation contract, the regulations required the Commission to reject his application. If a licensee renewed an affiliation contract, the regulations authorized the Commission to cancel his license. The Supreme Court held those regulations to be reviewable.

In that case the Federal Communications Commission was exercising regulatory power over private business. But here the Executive Order and the action pursuant to it did not represent an exercise of regulatory power over private business or employment. The President did no more than to prescribe conditions to govern executive agencies in the selection of their employees, and to instruct the Attor-

ney General to advise them with respect thereto.[1] To do so, within the limits of his constitutional and statutory authority, was the right and duty of the Chief Executive. The employment and discharge of its civil servants, and the establishment of terms and conditions which must be met by employees or applicants for employment, are internal administrative matters concerning which the United States is free to act as it pleases, without judicial compulsion or restraint at the instance of an outsider such as the appellant, IWO. *Compare Friedman* v. *Schwellenbach*, 81 U. S. App. D. C. 365, 367, 368, 159 F. (2d) 22, 24, 25 (1946), *cert. denied* 330 U. S. 838 (1947), where we said:

> "The United States has the right to employ such persons as it deems necessary to aid in carrying on the public business. It has the right to prescribe the qualifications of its employees and to attach conditions to their employment. The War Service Regulation which permits the removal from federal service of one concerning whose loyalty to the government the Civil Service Commission entertains a reasonable doubt undoubtedly was reasonable and proper and the making of it was well within the scope of the authority conferred on the Commission by the Act and the two executive orders. We are not concerned here with the question as to whether Friedman was in fact disloyal. Under the regulation he could be removed from service if the Commission had a reasonable doubt as to his loyalty."

When the Attorney General designated IWO as a subversive organization for the purposes of the Executive Order, he did no more than to advise the executive department in that respect, as he had been directed to do. If he was mistaken as to the true character of IWO, no court can cause him to change his conclusion. The correctness of administrative advice cannot be reviewed by the courts. *Employers Group, etc.* v. *National War Labor Board*, 79 U. S. App. D. C. 105, 143 F. (2d) 145 (1944).

We conclude that the act of the Attorney General in designating an organization as subversive for the purposes of the Executive Order, being a part of the government's process of exercising its authority to select its employees, and within the scope of the Executive Order, may not be judicially reviewed at the suit of the designated organization.

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[1] In *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 128, 129 (1940), the Supreme Court pointed out the distinction between legislation which regulates private business or employment and that which has to do with the government's conduct of its own business:

> "The Act does not represent an exercise by Congress of regulatory power over private business or employment. In this legislation Congress did no more than instruct its agents who were selected and granted final authority to fix the terms and conditions under which the Government will permit goods to be sold to it. The Secretary of Labor is under a duty to observe those instructions just as a purchasing agent of a private corporation must observe those of his principal. In both instances prospective bidders for contracts derive no enforceable rights against the agent for an erroneous interpretation of the principal's authorization. For erroneous construction of his instructions, given for the sole benefit of the principal, the agent is responsible to his principal alone because his misconstruction violates no duty he owes to any but his principal. The Secretary's responsibility is to superior executive and legislative authority."

Moreover, nothing is more firmly settled than the proposition that no person may attack the constitutionality of a statute unless he can show sufficient interest in himself. The rule applies with full force to attempted attacks upon the constitutionality of acts of the departments of government. It is an established principle that a private individual is not entitled to invoke the judicial power to determine the validity of executive or legislative action unless he can show that he has sustained or is immediately in danger of sustaining a direct injury as a result of that action. *Ex parte Albert Levitt*, 302 U. S. 633 (1937).

Executive Order No. 9835 and the administrative procedures thereunder directly affect nobody except government employees and applicants for government positions. Any injury suffered by IWO because of the Attorney General's subversive designation is an incidental result of the loyalty investigation. Not being directly affected thereby, it lacks the interest which it must have in order to maintain this action. The purpose and effect of the Executive Order and the action of the Attorney General, we said in *Joint Anti-Fascist Refugee Committee* v. *Clark, Attorney General*, 85 U. S. App. D. C. —, 177 F. (2d) 79 (1949), a suit very similar to this one,

> ". . . were not aimed at the Committee, but were necessary steps in executing the law and carrying out the loyalty program. It is not unusual for official action, intended for one purpose, to affect adversely others against whom it is not directed. But these unavoidable consequences cannot stay the hand of government. They afford no ground for judicial review. Perkins v. Lukens Steel Co., 310 U. S. 113, 84 L. Ed. 1108 (1940); Ex-Cell-O Corp. v. City of Chicago, 115 F. 2d 627 (C. C. A. 7th 1940)."

We held the Joint Anti-Fascist Refugee Committee had no standing to maintain the action. For the reasons set forth in that opinion, which it is unnecessary to repeat here, IWO could not maintain this action unless, as to its nature and situation, IWO is sufficiently different from the Refugee Committee to distinguish the two cases, and to show that IWO is affected by the actions of the appellees so directly as to entitle it to assail those actions on constitutional grounds.

It is true that IWO differs from the Refugee Committee in some respects, but in our view those differences do not distinguish the two cases. The Committee was an unincorporated association dependent for financial support upon voluntary contributions, while IWO is a business corporation with income from insurance premiums which it says has been impaired by the action of the appellees. It has, therefore, a property right which is legally protected, as it claims, but nevertheless the statute and the Executive Order have not been "applied" to IWO by the appellees; that is to say, IWO's property right in its income from insurance premiums has not been directly affected by the action taken under the Executive Order. And if the Commissioner of Internal Revenue has revoked IWO's tax exemptions because the Attorney General designated it as subversive, he did not do so under the direction of the President's Order. With respect to that grievance IWO must find its remedy in administrative or judicial review of the Commissioner's action, in which no doubt it can

have a hearing as to whether it is in fact subversive. In like manner, any investigation of IWO by the insurance departments of the states in which it does business, which may have been induced by the Attorney General's subversive designation, were not undertaken by those departments pursuant to the Executive Order. Undoubtedly the state insurance departments will afford hearings to IWO before penalizing it as subversive. So it is with all the injuries which IWO claims to have suffered; none of them is the direct result of the action of the appellees.

Since IWO's complaint sets forth no injury which it sustained as a direct result of the appellees' action under the Executive Order, we hold it could not maintain this action.

We turn next to Drayton's appeal from the order of the District Court which denied him leave to intervene. Rule 24 of the Federal Rules of Civil Procedure governs intervention. Obviously Drayton could not intervene of right under section (a) of Rule 24, and did not attempt to do so; he expressly relied upon section (b). The permissive intervention dealt with in section (b) is a matter of discretion with the trial court, and refusal to allow it is reversible error only in case abuse of discretion clearly appears. *Allen Calculators, Inc.* v. *National Cash Register Co.*, 322 U. S. 137 (1944).

Appellants urge that Drayton's "proposed cause of action presents questions of law and fact common with the main action and that his right to relief against the main and proposed defendants arises out of the same transactions and occurrences as are presented in the main action." Even if the District Court could have justifiably permitted Drayton to intervene, we are not prepared to say the denial of leave to do so was an abuse of discretion. Indeed the question is not properly before us, for neither the denial of Drayton's motion nor the dismissal of IWO's complaint operated as an adjudication of Drayton's rights, whatever they may be; and neither barred him from instituting an original action of his own. That being so, the order denying leave to intervene was not a final order and was not appealable. *Allen Calculators, Inc.* v. *National Cash Register Co., supra*; *Cameron* v. *President and Fellows of Harvard College*, 157 F. (2d) 993 (C. C. A. 1st 1946); *Cresta Blanca Wine Co.* v. *Eastern Wine Corp.*, 143 F. (2d) 1012 (C. C. A. 2nd 1944).

Affirmed as to appeal of International Workers Order; Drayton's appeal dismissed.

EDGERTON, Circuit Judge, *dissenting:* The court is holding that a corporation which alleges grave and irreparable financial injury caused by a permanent government regulation has no standing to litigate the question whether its constitutional rights are denied, though the regulation was adopted without a hearing and the complaint alleges that it is factually untrue. I think this erroneous for the reasons stated in my dissent in *Joint Anti-Fascist Refugee Committee* v. *Clark*.[1] In addition to the cases there cited, *La Crosse Tele-*

[1] 85 U. S. App. D. C. , 177 F. 2d 79; *cert. granted*, U. S. , March 13, 1950, 18 L. W. 3256.

phone Corp. v. *Wisconsin*, 336 U. S. 18, shows that the appellant corporation has standing to sue. Its standing is, I think, even clearer than that of the appellant in the *Joint Anti-Fascist* case. I think it immaterial that the regulation here attacked as unconstitutional deals immediately with public business. The *Lukens* case, 310 U. S. 113, is irrelevant because no regulation was there attacked as unconstitutional.

In my opinion the District Court erred in denying the motion of appellant Drayton to intervene. Disloyalty proceedings had been brought against him solely because of his membership and activity in the appellant corporation.[2] As he says in his motion, "(1) applicant's claim and the main action have questions of law and fact in common, and (2) there is asserted against the proposed defendants a right of relief arising out of the same transaction, occurrence or series of actions and occurrences." As he says in his proposed complaint, "Plaintiff has no administrative remedy since all of the defendants hold that the designation of the Order is final and conclusive with respect to the status, character and rights of the Order not only as to them but as to plaintiff as well and that plaintiff may not at any state of the administrative process be heard with respect thereto." The Attorney General's ruling that the corporation is subversive concludes that question in loyalty proceedings against its members.[3] It was unlikely that the corporation could represent Drayton's interest adequately, for this court held in the *Joint Anti-Fascist* case that no organization designated by the Attorney General as subversive can assert a claim in behalf of its members; "only the members themselves are entitled to complain of any personal injuries they may suffer."[4]

"The permissive nature of . . . intervention necessarily implies that, if intervention is denied, the applicant is not legally bound or prejudiced by any judgment that might be entered in the case. He is at liberty to assert and protect his interests in some more appropriate proceeding."[5] No other "appropriate proceeding" was available to Drayton, and no showing was made that his intervention would "delay or prejudice the adjudication of the rights of the original parties."[6] I think the District Court's refusal to permit him to intervene was an abuse of discretion.

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[2] After this appeal was argued, and in response to an inquiry from the bench during the argument of *Washington et al.* v. *McGrath*, No. 10413, the Department of Justice informed us that a finding of "reasonable grounds for belief" that Drayton is disloyal has been made by the Post Office Department Loyalty Board and affirmed by the Postmaster General.

[3] Loyalty Review Board, Memorandum No. 2, March 9, 1948.

[4] 85 U. S. App. D. C. , , 177 F. 2d 79, 83.

[5] *Brotherhood of Railroad Trainmen* v. *Baltimore & Ohio R. R.*, 331 U. S. 519, 524.

[6] Rule 24(b), F. R. Civ. P.

[fol. 70] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Mar. 22, 1950. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, JANUARY TERM, 1950

No. 10308

INTERNATIONAL WORKERS ORDER, INC., and ARTHUR LOWNDES DRAYTON, Appellants,

vs.

J. HOWARD MCGRATH, Individually and as Attorney General of U. S., et al., Appellees

Appeal from the United States District Court for the District of Columbia

Before: Edgerton, Wilbur K. Miller and Proctor, Circuit Judges

Order

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed as to International Workers Order, Inc., and

It is further ordered by the Court that the appeal taken by Arthur Lowndes Drayton herein be, and the same is hereby, dismissed.

Per Circuit Judge Wilbur K. Miller.

Dated March 22, 1950.

Dissenting opinion by Circuit Judge Edgerton.

[fol. 71] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Apr. 19, 1950. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 10308

INTERNATIONAL WORKERS ORDER, INC., and ARTHUR LOWNDES DRAYTON, et al., Appellants,

vs.

J. HOWARD MCGRATH, Individually and as Attorney General of the United States, et al., Appellees

Designation of Record

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint Appendix (attached to Brief for Appellants).
2. Order dated November 18, 1949 substituting J. Howard McGrath in place of Tom C. Clark as Appellee.
3. Minute entry of argument.
4. Opinion.
5. Judgment.
6. This designation.
7. Clerk's certificate.

Allan R. Rosenberg, Attorney for Appellants.

[fol. 72] *Certificate of Service*

I hereby certify that I served the foregoing Designation of Record on each of the following: Philip Perlman, Esq., Solicitor General of the United States, and Edward H. Hickey, Esq., Special Assistant to the Attorney General, both of the Department of Justice, and on George Morris Fay, Esq., United States Attorney, and Joseph Howard, Esq., Assistant United States Attorney, District Court House, all of Washington, D. C., by mailing a copy to each of them by regular United States mail, postage prepaid, on April 17, 1950.

Allan R. Rosenberg, Attorney for Appellants.

[fol. 73] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages numbered from 1 to 72, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties, and of the proceedings in the said Court of Appeals, as designated by counsel, in the case of: International Workers Order, Inc., and Arthur Lowndes Drayton, Appellants, v. J. Howard McGrath, Individually and as Attorney General of the United States, et al., Appellees. No. 10308, January Term, 1950, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this first day of May, A. D. 1950.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit.
(Seal.)

[fol. 73] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary docket and assigned for argument immediately following National Council of American-Soviet Friendship, Inc., vs. McGrath, No. 7, October Term, 1950.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark took no part in the consideration or decision of this application.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 71

INTERNATIONAL WORKERS ORDER, INC. AND ARTHUR LOWNDES DRAYTON,
Petitioners,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

LEE PRESSMAN,
ALLAN R. ROSENBERG,
Counsel for Petitioners.

MORRIS SHAPIRITZ,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 819

INTERNATIONAL WORKERS ORDER, INC. AND ARTHUR LOWNDES DRAYTON,

Petitioners,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

The petitioners herein pray that a writ of certiorari issue to review a decision of the United States Court of Appeals for the District of Columbia, rendered March 22, 1950, affirming a judgment of the United States District Court for the District of Columbia dismissing the complaint of petitioner International Workers Order, Inc. against the above named respondents [1] and denying the application of petitioner Drayton for leave to intervene in the proceeding.

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[1] The complaint originally named Tom C. Clark, Attorney General, as a defendant. By order of the Court of Appeals (R. 61), J. Howard McGrath was substituted.

Summary of the Matter Involved

On February 18, 1949, the petitioner International Workers Order, Inc. (hereinafter referred to as the I. W. O.) filed a complaint requesting a declaratory judgment and injunction against the Attorney General and the members of the Loyalty Review Board of the United States Civil Service Commission (hereinafter called the Board) (R. 2, 33). On the same date, petitioner Drayton, an employee of the Post Office Department, sought leave to intervene, add an additional cause of action against and joint as defendants the members of the Loyalty Board of the Post Office Department (R. 32).

No answer to the complaint was filed. Respondents filed motions to dismiss the complaint (R. 57) and to deny the application for intervention (R. 57). The motions were granted. The allegations of the complaint and petition for intervention which for these purposes must be accepted as true, may be summarized as follows:

The I. W. O. is licensed to operate and does operate as a non profit fraternal and insurance society in 18 states and the District of Columbia, embracing 185,000 members (R. 5, 6).

The I. W. O. functions as an interracial federation of national group societies to which its members belong according to their national origin or descent. It is the only interracial fraternal benefit society in the United States which forbids discrimination and segregation in its organization and which welcomes the Negro people into membership (R. 7).

The I. W. O. as part of its fraternal activities has fostered and encouraged various cultural and educational programs designed to preserve the cultural heritages and artistic values developed over the years by the peoples of the different countries of the world to the end that these cultures and values may be integrated into American life (R. 8).

The life insurance protection carried by the membership is in excess of $120,000,000 and the assets of the I. W. O. are approximately $5,000,000 in a ratio of 145% of liabilities or 45% in excess of insurance law requirements (R. 8).

The I. W. O. is strictly supervised by the insurance departments of the various states in which it carries on its business and activities and files a comprehensive annual report in each of such states (R. 10).

The I.W.O. is expressly dedicated to the democratic ideals and traditions of the United States and to the principles of freedom and equality embodied in the Constitution, and is opposed to the commission of acts of force or violence, to the denial of rights to any person and to the altering of our form of government by any illegal or unconstitutional means (R. 13, 14).

On March 25, 1947, the President of the United States issued Executive Order 9835, establishing an employees loyalty program in the executive branch of the federal government. Part III, Section 3 of the Order provided that the Loyalty Review Board established thereunder, shall be furnished by the Attorney General the names of organizations designated by him "after appropriate investigation and determination" as "totalitarian, fascist, communist or subversive or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means" (R. 14, 15).

In November 1947, the Attorney General provided the Board a list of organizations, so designated by him, including the I.W.O. (R. 3).

The I.W.O. never received any notice or hearing with respect to such designation (R. 15).

This designation is completely contrary to fact in that the purposes, objectives and activities of the I.W.O. are in no sense "subversive", it is not an organization within the meaning of Part III, Section 3 of the Executive Order and it has not adopted any policy of advocating or approving the commission of acts of force or violence or to deny other persons their rights under the Constitution or as seeking to alter the form of government by unconstitutional means (R. 12).

In December 1947, the Board publicized the listing of the Attorney General and disseminated the information to the federal departments and agencies for use in the determination whether individuals should be dismissed from federal employment or denied the same on the basis that "reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States." (Ex. Order III, (3) (a), V (1)). In the determination of this issue, there is considered the individual's "membership in, affiliation with or sympathetic association with" any organization on the Attorney General list. (id., V(2) (f)).

As a direct result of the actions of the respondents, the I.W.O. has suffered and is threatened with even greater pecuniary loss and deprivation of valuable contractual rights and other property interests. The specific allegations to this effect include: Many members (particularly present federal employees or prospective applicants for such employment) have resigned or withdrawn from membership in the I.W.O., thereby discontinuing their payment of dues and cancelling their insurance. The Commissioner of Internal Revenue has revoked the tax exempt status of the Order. Departments of Insurance in the several states in which the I.W.O. is licensed have been instigated to initiate proceedings to revoke such licenses, thereby jeopardizing the valuable property interests which it has in such

licenses and franchises. Subordinate bodies of the I.W.O. have been hampered in obtaining the use of public schools, private homes and in renting halls and similar places for the conduct of meetings, rallies, social and recreational affairs necessary for the proper functioning of the I.W.O. Members of the I.W.O. who have pending petitions for naturalization have been denied naturalization or have had their petitions held in abeyance because of their membership in the I.W.O. Employees in private plants, which have government contracts, have been or are threatened with discharge because of their membership, or that of members of their families, in the I.W.O. Many potential members, especially present and prospective civil servants, have declined and will continue to decline to become members of the I.W.O. The I.W.O. and its members have been vilified and have suffered public shame, disgrace and economic injury (R. 16, 17, 18).

The petitioner Drayton in his specific cause of action alleges that he is and has been for more than 24 years employed by the Post Office Department as a clerk under the classified civil service; that he is and has been a member of the I.W.O., and that he desires to continue such membership with its established valuable insurance rights and benefits, that the respondents constituting the Post Office Department Loyalty Board have served him with charges looking toward his dismissal solely because of his membership in the I.W.O., that in such proceedings, the designation of the I.W.O. as "subversive"[2] by the Attorney General will be final, binding and conclusive, and that his dismissal on the charges preferred against him would be equivalent to a criminal stigmatization of him and would result in his disqualification not only from public but from

[2] This term "subversive" is used to embrace all the categories referred to in Part III, Section 3 of Executive Order 9835.

private employment; and that he has no adequate remedy at law (R. 53, 54, 55).[3]

The complaint alleged that the Executive Order on its face and as construed and applied by the Attorney General and the actions of the respondents were unconstitutional (R. 19, 20).

The relief requested was for a declaratory judgment to such effect and an injunction directing the respondents to remove the name of the I.W.O. from the "subversive" list, desist from further designating or publicizing the Order as a subversive organization, and restraining the dismissal of petitioner Drayton because of his membership in the I.W.O. (R. 22, 56).

Opinions Below

The judgment of the District Court dismissing the complaint and denying leave for intervention (R. 58) was affirmed by the Court of Appeals for the District of Columbia on March 22, 1950, Edgerton, J. dissenting, (still unreported).

The majority opinion, written by Miller, J. found that the act of the Attorney General in designating the I.W.O. as subversive to be within the scope of the Executive Order and not a subject for judicial review at the suit of the designated organization, that any injury suffered by the I.W.O. because of the Attorney General's subversive designation was "an incidental result" and "Not being directly affected thereby, it lacks the interest which it must have in order

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[3] In the minority dissenting opinion of the Court below, there is the following comment: "After this appeal was argued, and in response to an inquiry from the bench during the argument of *Washington, et al. v. McGrath*, No. 10413, the Department of Justice informed us that a finding of 'reasonable grounds for belief' that Drayton is disloyal has been made by the Post Office Department Loyalty Board and affirmed by the Postmaster General."

to maintain the action." The majority opinion in addressing itself to Petitioner Drayton held that the lower court's denial of leave for intervention was not an abuse of discretion and in any event not a final order and therefore not appealable.

The dissenting opinion found for the reasons stated in his dissent in the case of *Joint Anti-Fascist Refugee Committee* v. *Clark*[4] that the I.W.O. had "standing to sue" where it "alleges grave and irreparable financial injury caused by a permanent government regulation" and "litigate the question whether its constitutional rights are denied." In addition Edgerton, J. found that the District Court erred in denying leave to the petitioner Drayton to intervene and that such denial was an abuse of discretion.

Statement of Jurisdiction

The judgment of the Court of Appeals was entered on March 22 (R. 70).

The jurisdiction of this Court is invoked under 28 U. S. Code, Section 1254.

Statute and Order Involved

Section 9A of the Hatch Act (Act of August 2, 1939, c. 410, Sec. 9A, 53 Stat. 1148, 5 U.S.C.A. Sec. 118j):

> "(1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.
>
> (2) Any person violating the provisions of this section shall be immediately removed from the position

[4] Certiorari granted by this Court in the case on March 13, 1950.

or office held by him and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person."

Executive Order 9835, 12 F. R. 1935, issued March 21, 1947, entitled "Prescribing Procedures for the Administration of an Employees Loyalty Program in the Executive Branch of the Government" provides in part as follows:

PART III, SEC. 1

There shall be established in the Civil Service Commission a Loyalty Review Board of not less than three impartial persons, the members of which shall be officers or employees of the Commission.

a. The Board shall have authority to review cases involving persons recommended for dismissal on grounds relating to loyalty by the loyalty board of any department or agency and to make advisory recommendations thereon to the head of the employing department or agency. Such cases may be referred to the Board either by the employing department or agency, or by the officer or employee concerned.

b. The Board shall make rules and regulations not inconsistent with the provisions of this order, deemed necessary to implement statutes and Executive orders relating to employee loyalty.

c. The Loyalty Review Board shall also:

(1) Advise all departments and agencies on all problems relating to employee loyalty.

(2) Disseminate information pertinent to employee loyalty programs.

(3) Coordinate the employee loyalty policies and procedures of the several departments and agencies.

(4) Make reports and submit recommendations to the Civil Service Commission for transmission to the

President from time to time as may be necessary to the maintenance of the employee loyalty program.

PART III, SEC. 3

The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

a. The Loyalty Review Board shall disseminate such information to all departments and agencies.

PART V

1. The standard for the refusal of employment or the removal from employment in an executive department or agency on grounds relating to loyalty shall be that, on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States.

2. Activities and associations of an applicant or employee which may be considered in connection with the determination of disloyalty may include one or more of the following:

a. Sabotage, espionage, or attempts or preparations therefor, or knowingly associating with spies or saboteurs;

b. Treason or sedition or advocacy thereof;

c. Advocacy of revolution or force or violence to alter the constitutional form of government of the United States.

d. Intentional, unauthorized disclosure to any person, under circumstances which may indicate disloyalty to the United States, or documents or information of a confidential or non-public character obtained by the person making the disclosure as a result of his employment by the Government of the United States;

e. Performing or attempting to perform his duties or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States;

f. Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

Questions Presented

1. Whether the petitioners, alleging that the actions of the respondents have caused them grave pecuniary loss and seriously impaired their rights to speak and assemble, may contest the constitutionality of such actions as designating the I. W. O., contrary to fact, as a subversive organization, in the absence of appropriate investigation and determination and of any due process procedures, in widespread dissemination of such listing and applying the listing in connection with the eligibility of Drayton for continuance in federal employment.

2. Whether the Attorney General in designating the I. W. O., contrary to fact, as a subversive organization under Executive Order 9835 violated the Ninth and Tenth Amendments.

3. Whether the Attorney General violated the Fifth Amendment in having acted in the absence of any procedural due process of law.

4. Whether the Attorney General violated the First Amendment by abridging the petitioners' freedoms of speech and assembly.

5. Whether the relief requested by the petitioners, on the basis of the complaint, can be granted.

Reasons for Granting the Writ

The writ should be granted because (1) this case presents substantially the same legal issues, of great constitutional and public importance, as those raised in *Joint Anti Fascist Refugee Committee* v. *Clark* in which the Court has granted certiorari. 70 Sup. Ct. Rep. 573, and (2) certain vital facts present in this case but not in the Joint Anti Fascist case give crucial support to the position of the petitioners.

1. Essentially the same legal issues of great constitutional and public importance are presented in this and the Joint Anti Fascist Refugee Cases.

The petitioners have alleged grave and irreparable injury to property interests and to their enjoyment of freedoms of speech and assembly, resulting directly from action taken by the Attorney General and other Executive officials under Executive Order 9835. The actions were taken without the slightest semblance of procedural due process of law.

Nevertheless the court below held that the Attorney General's action, in designating the I.W.O. as a subversive organization for the purposes of the Executive Order (though denied by the I.W.O. in the complaint as factually untrue) (1) was merely an expression of advice to the Executive Department in the government's process of exer-

cising its authority to select its employees and (2) did not directly apply or result in any direct injury to the I.W.O., and therefore not subject to judicial review. The Court even stated that "If he (the Attorney General) was mistaken as to the true character of I.W.O., no court can cause him to change his conclusion."

The petitioners contend that on the basis of the facts set forth in the complaint, which are uncontested, they have a legal standing to challenge the constitutionality of the actions of the respondents in designating the I.W.O., contrary to fact, as a subversive organization, in the absence of appropriate investigation and determination and of any due process procedures, in widespread dissemination of such listing and applying the listing in connection with the eligibility of petitioner Drayton for continuance in Federal employment. *La Crosse Tel. Corp.* v. *Wisconsin Employment Relations Board,* 336 U. S. 18; *Columbia Broadcasting System* v. *United States,* 316 U. S. 407; *Waite* v. *Macy,* 246 U. S. 606.

We further contend that the complaint sets forth valid causes of action against the respondents in that (1) their actions abridge the petitioners' freedoms of speech and assembly protected by the First Amendment, *Ex Parte Endo,* 323 U. S. 283; *Thomas* v. *Collins,* 323 U. S. 516; See Emerson and Helfeld, Loyalty Among Government Employees, 58 Yale L.J.I; (2) such actions were taken without procedural due process of law and therefore in violation of the Fifth Amendment, *Morgan* v. *U. S.,* 301 U. S. 292, In re *Oliver,* 333 U. S. 257, See O'Brian, Loyalty Tests and Guilt by Association, 61 Harv. L. Rev. 592; and (3) such actions are in excess of any power vested in the Executive and constitute a violation of the Ninth and Tenth Amendments, *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624.

This Court has already determined to review the Joint Anti Fascist case. There is no need to encumber this petition with a repetition of the basic reasons which have already been urged in the Joint Anti Fascist case for the granting of certiorari.

We desire to point out that there are additional and important facts in this case, but not found in the Joint Anti Fascist case, which should have a vital and material bearing upon the crucial questions involved.

2. Additional important facts in this case which have a direct bearing on legal issues involved.

First, the majority opinion of the Circuit Court of Appeals in the Joint Anti Fascist case relied in part upon the fact that the complaint failed to assert affirmatively that the plaintiff was not an organization within the scope of the Executive Order. The Court therein stated "The complaint contains no express denial that the Committee falls within the designation made by the Attorney General. In view of the extraordinary relief sought by way of equity a denial would seem to be appropriate. This is, in no sense, a simple action for libel." 177 Fed. 79, 81.

In the instant case, the I.W.O. specifically affirms that its subversive designation by the Attorney General is contrary to fact. In addition the complaint sets forth at length the specific policies of the I.W.O. to prove that its designation by the Attorney General is contrary to fact. The I.W.O. has also pointed out that as a licensed fraternal and insurance society authorized to conduct its business in 18 States and the District of Columbia, it is under the direct and closest scrutiny and supervision of the Department of Insurance of those States, with an annual reporting required.

Thus, no greater demonstration could possibly be made than that presented by the I.W.O. in its complaint, which

is unchallenged, that the action of the Attorney General taken against the I.W.O. does not have the slightest justification in fact or law and therefore can be properly challenged.

Second, the I.W.O. in its complaint sets forth clearly defined property interests as having been directly affected by the action of the Attorney General and specifically described pecuniary loss to the I.W.O. resulting therefrom.

For example, the complaint describes the insurance features of the I.W.O. Its members, solely through such membership, hold insurance policies which are paid for by their dues. A resignation or withdrawal from membership in the I.W.O. by any individual necessarily involves a loss of all his insurance rights and benefits. The I.W.O. therefore has definite and concrete existing contractual relationships with its members. The complaint alleges that as a direct result of the subversive designation of the I.W.O. by the Attorney General, many of its members, some of whom are federal employees, resigned their membership in the I.W.O. thereby cancelling their insurance contracts with the I.W.O. with consequent loss of dues for the I.W.O. and of insurance rights and benefits for the members.

The majority of the Court below was apparently troubled by these facts and felt compelled to make a specific answer to the question whether such facts did not require a different legal conclusion from that reached in the Joint Anti-Fascist case.

> "It is true that I.W.O. differs from the Refugee Committee in some respects, but in our view those differences do not distinguish the two cases. The Committee was an unincorporated association dependent for financial support upon voluntary contributions, while I.W.O. is a business corporation with income from insurance premiums which it says has been impaired by the action of the appellees. It has therefore a property right

> which is legally protected, as it claims, but nevertheless the statute and the Executive Order have not been 'applied' to I.W.O. by the appellees, that is to say I.W.O.'s property right in its income from insurance premiums has not been directly affected by the action taken under the Executive Order."

We respectfully except, of course, to the conclusion reached by the Court below. It is a sheer distortion of the facts presented in the case to maintain that the "grave and irreparable financial injury caused by a permanent government regulation" is a mere indirect consequence of the action of the Attorney General and therefore cannot be challenged. Because of the minority dissenting Justice's contrary decision as to the causal relationship between the action of the Attorney General and the injury complained of, he held on the basis of the clearly defined interference with contractual and constitutional rights: "Its (I.W.O.) standing, is, I think, even clearer than that of the appellant in the Joint Anti Fascist case."

It is difficult to see how the Columbia Broadcasting Case, supra can be distinguished from this case on the issue of legal standing to sue. It not only furnishes authority in support of our position, but the language of Mr. Chief Justice Stone might almost have been written to fit the facts here. In that case, the Federal Communications Commission had issued a statement of general policy to the effect that radio stations whose contracts with broadcasting networks contained certain specified provisions would not secure renewal of their licenses from the Commission and might even have their existing licenses revoked. The plaintiff network sought to restrain the Commission from putting its policy into effect, alleging that several stations had refused to renew their contracts with the plaintiff and that others threatened to do so.

The Commission contended the plaintiff network had no legal standing to sue on the grounds that (1) the statement issued by the Commission did not "apply" to the network but merely to the individual stations and (2) the statement did not operate as a binding regulation imposing obligations but was merely equivalent to a press release.

The Chief Justice dismissed both objections.

In the instant case, similarly, the arguments that the action of the Attorney General merely applied to federal employees and not to the I.W.O. and constituted only advice to the Executive, must be rejected in the face of the facts set forth in the complaint.

The I. W. O. has alleged that as a fraternal insurance society it has contractual relations with its members through the insurance policies; that as a direct result of the actions of the Attorney General, members have terminated their membership which has meant an automatic cancellation of their insurance policies with resulting pecuniary loss to the I. W. O. and such members. The reason for such resignations must be obvious. A federal employee who was a member of the I. W. O. had a simple choice: if he desired not to endanger his job, he had to resign from the I. W. O.; if he desired to keep his insurance and membership in the I. W. O., he had to resign from his federal employment. The case of the petitioner Drayton is ample proof that a member of the I. W. O. who is a federal employee, following the action of the Attorney General in listing the I. W. O. as a subversive organization, could not continue both his membership and employment.

The respondents' claim that the Attorney General's action is a mere expression of advice and therefore not reviewable by judicial action is precisely the issue covered by the Chief Justice in his opinion in the Columbia Broadcasting case: "The Commission's contention that the regulations are no more reviewable than a press release is hardly

reconcilable with its own recognition that the regulations afford legal basis for cancellation of the license of a station if it renews its contract with appellant". 316 U. S. 407, 422. So here, the Attorney General's subversive listing forwarded to all other federal agencies, and in the case of the petitioner Drayton actually used, as a basis for dismissal of federal employees who, are members of the I. W. O. cannot be construed as a mere press release.

Third, this case, as distinguished from the Joint Anti Fascist case, presents the claim not only of the I. W. O. but that of a federal employee who is a member of the I. W. O., against whom charges have been filed under the Executive Order solely because of his membership in the I. W. O., whose subversive designation cannot be contested by the employee in any administrative proceeding.

Petitioner Drayton, as a member of the I. W. O. and a federal employee, confronted as a result of the Attorney General's action under the Executive Order with a most difficult Hobson's choice, seeks relief as an intervenor in the proceeding. He says in his proposed cause of action "Plaintiff has no administrative remedy since all of the defendants hold that the designation of the Order is final and conclusive with respect to the status, character and rights of the Order not only as to them but as to plaintiff as well and that plaintiff may not at any state of the administrative process be heard with respect thereto" (R. 55).

This allegation cannot be contested since it is confirmed by the Loyalty Review Board. See Loyalty Review Board, Memorandum No. 2, March 9, 1948.

In the Joint Anti Fascist case, the Court denied relief to the Committee plaintiff, in part, on the ground that it could not assert the injury to its members. "If the Committee means to assert claims in behalf of its members reputedly disgraced by reason of the designation, it is enough to point out that only the members themselves are

entitled to complain of any personal injuries they may suffer. Likewise, only the members, not the Committee, can seek redress for alleged impairment of members' constitutional rights of freedom of speech and assembly'' 177 F. 2d 79, 83.

Drayton's application for leave to intervene presented a claim which had common questions of law and fact with the main action and asserted a right for relief ''arising out of the same transaction, occurrence or series of actions and occurrences'' (R. 32).

In view of the fact that no other appropriate proceeding is available to Drayton and certainly no showing was made before the District Court that his intervention would delay or prejudice the adjudication of the rights of the original parties, the denial of his application for leave to intervene was an abuse of discretion.

We submit that the factual differences between the instant case and the Joint Anti Fascist case, which we have noted, have an important and material bearing upon the legal issues involved. The writ, requested herein, should therefore be granted in order that this case in view of its special facts may be heard independently but in view of the similarity of legal issues be considered by the Court along with the Joint Anti Fascist case.

Conclusion

The writ of certiorari should be granted and the judgment below should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 71

INTERNATIONAL WORKERS ORDER and
ARTHUR LOWNDES DRAYTON,
Petitioners,

v.

J. HOWARD MCGRATH, Individually and as Attorney General of the United States, et al.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONERS

ALLAN R. ROSENBERG,
Attorney for Petitioners.

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Opinions Below

The opinion of the District Court for the District of Columbia (R. 58) is reported at 88 F. Supp. 873. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 63-69) is reported at 182 F. 2d 368.

Jurisdiction

The judgment of the Court of Appeals was entered on March 22, 1950 (R. 70). The petition for a writ of cer-

tiorari was filed on May 11, 1950, and was granted on October 9, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1. Whether the petitioner International Workers Order, Inc., which alleges grave and irreparable financial injury caused by a permanent Government regulation, in the form of the designation made by the Attorney General pursuant to instructions issued by the President under Executive Order 9835, has standing to litigate the question whether its Constitutional rights have been denied, where the regulation was adopted without a hearing, the complaint alleges that it is factually untrue, and the case is before this Court on the affirmance by the Court below of an appeal from the granting by the District Court of the Government's motion to dismiss.

2. Whether the petitioner Drayton should have been permitted to intervene in the District Court as co-plaintiff prosecute a supplemental and ame... complaint in this cause, where Drayton's claim and the main action had questions of law and fact in common and there was asserted a right of relief arising out of the same transaction as involved in the main action, and where there was no other appropriate proceeding in which petitioner Drayton could protect his interests.

Statute and Executive Order Involved

Section 9A of the Hatch Act, 53 Stat. 1147, 1148, 5 U. S. C. Supp. II, 118j, and Executive Order 9835, 12 F. R. 1935, are set forth in the Appendix to the Brief for Respondents in *Bailey* v. *Richardson*, No. 49, this Term.

Statement

On February 18, 1949, the petitioner International Workers Order, Inc. (hereinafter referred to as the I. W. O.) filed a complaint requesting a declaratory judgment and injunction against the Attorney General and the members of the Loyalty Review Board of the United States Civil Service Commission (hereinafter called the Board) (R. 2, 33). On the same date, petitioner Drayton, an employee of the Post Office Department, sought leave to intervene, add an additional cause of action against and join as defendants the members of the Loyalty Board of the Post Office Department (R. 32).

No answer to the complaint was filed. Respondents filed motions to dismiss the complaint (R. 57) and to deny the application for intervention (R. 57). The motions were granted. The allegations of the complaint and petition for intervention which for these purposes must be accepted as true, may be summarized as follows:

As a direct result of the designation by the Attorney General of petitioner I. W. O. as subversive, without notice or hearing and contrary to fact, under Executive Order 9835, and the dissemination and application of the Attorney General's designation by the Board the respondent, the I. W. O., which is a fraternal benefit non-profit insurance society, operating as an interracial federation of national group societies, has suffered and is threatened with great pecuniary loss and deprivation of valuable contractual rights and other property interests. The specific allegations to this effect include:

Many members (particularly present federal employees or prospective applicants for such employment) have resigned or withdrawn from membership in the I. W. O. thereby discontinuing their payment of dues and cancelling their insurance. The Commissioner of Internal Revenue has revoked the tax exempt status of the Order. Departments of insurance in the several states in which the I. W

O. is licensed have been instigated to initiate proceedings to revoke such licenses, thereby jeopardizing the valuable property interests which it has in such licenses and franchises. Subordinate bodies of the I. W. O. have been hampered in obtaining the use of public schools, private homes and in renting halls and similar places for the conduct of meeting, rallies, social and recreational affairs necessary for the proper functioning of the I. W. O. Members of the I. W. O. who have pending petitions for naturalization have been denied naturalization or have had their petitions held in abeyance because of their membership in the I. W. O. Employees in private plants, which have government contracts, have been or are threatened with discharge because of their membership, or that of members of their families, in the I. W. O. The I. W. O. and its members have been vilified and have suffered public shame, disgrace and economic injury (R. 16, 17, 18).

The petitioner Drayton in his specific cause of action alleges that he is and has been for more than 24 years employed by the Post Office Department as a clerk under the classified civil service; that he is and has been a member of the I. W. O., and that he desires to continue such membership with its established valuable insurance rights and benefits, that the respondents constituting the Post Office Department Loyalty Board have served him with charges looking toward his dismissal solely because of his membership in the I. W. O., that in such proceedings, the designation of the I. W. O. as "subversive" * by the Attorney General will be final, binding and conclusive, and that his dismissal on the charges preferred against him would be equivalent to a criminal stigmatization of him and would result in his disqualification not only from public but from private employment; and that he has no adequate remedy at law (R. 53, 54, 55).

* This term "subversive" is used to embrace all the categories referred to in Part III, Section 3 of Executive Order 9835.

The complaint alleged that the Executive Order on its face and as construed and applied by the Attorney General and the actions of the respondents were unconstitutional (R. 19, 20).

The relief requested was for a declaratory judgment to such effect and an injunction directing the respondents to remove the name of the I. W. O. from the "subversive" list, desist from further designating or publicizing the Order as a subversive organization, and restraining the dismissal of petitioner Drayton because of his membership in the I. W. O. (R. 22, 56).

ARGUMENT

1. The I. W. O.

As to petitioner I. W. O., the only question before this Court is whether it has standing to sue. Holding that it does, Judge Edgerton, in his dissenting opinion below, said that its standing was even clearer than that of the appellant in the *Joint Anti-Fascist* case (R. 69). We submit that Judge Edgerton's conclusion is demonstrably correct and that under the authorities and on this record, the Court below was in error in upholding the order of the District Court in granting the government's motion to dismiss.

The test of whether a petitioner has standing to sue depends on the particular statute involved and its setting. In case by case adjudication, this Court has formulated the controlling criteria, the elements of which have been stated by Mr. Justice Stone in *Columbia Broadcasting Co.* v. *United States*, 316 U. S. 407, 425:

> "The ultimate test of reviewability is not to be found in an over-refined technique but in the need of the review to protect from the irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudication that may follow, the results of which the regulations purport to control."

by Mr. Justice Reed in *Stark* v. *Wickard*: 321 U.S. 288 at 290:

> "Petitioners must show that the act of the Secretary amounts to an interference with some legal right of theirs. If so, the familiar principle that executive officers may be restrained from threatened wrongs in the ordinary courts in the absence of some exclusive alternative remedy will enable the petitioners to maintain their suit."

and by Mr. Justice Stone for an unanimous Court in *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 412, speaking of whether the District Courts have jurisdiction to entertain an independent suit in equity to review a certification of the Board:

> "It can be appropriately answered only upon a showing in such a suit that unlawful action of the Board has inflicted an injury on petitioners for which the ~~case~~ law, apart from the review provisions of the Wagner Act, affords a remedy."

See also *Shields* v. *Utah Idaho Central R. Co.*, 305 U. S. 177; *Utah Fuel Co.* v. *National Bituminous Coal Commission*, 306 U. S. 56; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 145; *American Communications Association* v. *Douds*, 339 U. S. 382; *LaCrosse Telephone Corp.* v. *Wisconsin L. R. B.*, 336 U. S. 18. Cf. *U. S.* v. *Los Angeles & S. L. R. Co.*, 273 U. S. 299; *Standard State Co.* v. *Farrell*, 249 U. S. 571.

Petitioner here, as we shall proceed to show, fully meets these criteria. It has constitutionally protected rights which the Attorney General by his designation, under the statutory scheme here involved, has abridged and denied; and there is need and warrant for judicial review to protect those rights from the irreparable injury threatened by that designation.

As a preliminary matter, we point out that the Government by filing a motion to dismiss, has chosen to try the sufficiency and not the truth of the complaint. The complaint specifically denies that the I. W. O. is subversive,

and asserts that its designation by the Attorney General is without the slightest basis in truth or in fact (R. 18, 12, 13). The affirmative facts set forth in the complaint allege the activities of a fraternal insurance society, which are not subversive. Since the District Court granted the motion to dismiss, it must be assumed that the allegations of the complaint are true. *Stark* v. *Wickard*, 321 U. S. 302; *Columbia Broadcasting Co.* v. *United States*, 316 U. S. 414; *Hearst Radio, Inc.* v. *F. C. C.*, 167 F 2d. 225 (App. D. C.).

Even if this were not the posture of the case before this Court, we wish to point out that the procedure adopted by the Attorney General (which, we submit, is beyond the authority of the Hatch Act and of the Executive Order 9835, and in violation of petitioner's constitutional rights for reasons set forth in Judge Edgerton's dissents in the *Joint Anti-Fascist* case and in this case) necessarily breeds error. The fact is that wherever the I. W. O. has had an opportunity to meet such charges in a fair hearing before an administrative or judicial tribunal, it has successfully combatted them (R. 10-13).

PETITIONER'S RIGHTS. Petitioner is a fraternal benefit society, organized in 1930 as a mutual benefit and non-profit corporation without capital stock, under Article 7 of the Insurance Law of the State of New York, providing sickness, death and other insurance benefits to its members. It operates on the lodge system as an interracial federation of national group societies to which its members belong according to their national origins or descent, and has a representative form of government as defined by Section 452 of the Insurance Law of the State of New York. At the time of the Attorney General's designation, it was licensed to operate and did operate in eighteen states, and the District of Columbia, with 185,000 members (including employees of the federal government), 1860 lodges, life insurance policies outstanding in excess of $120,000,000, and assets of five million dollars in a ratio of 145% to liabilities or forty-five percent in excess of insurance law

requirements. Its Declaration of Principles, the types of insurance which it issues, requirements for eligibility to membership, its rates, options, benefits and system of government, are set forth in detail in the printed copy of its constitution and by-laws (R. 23, Exhibit A).

It is not denied that petitioner I. W. O. has a right to engage in the insurance business, subject to applicable state and federal laws; to solicit government employees or anyone else to become members and buy the insurance which it sells; to conduct meetings, issue pamphlets and newspapers, and make whatever advantageous economic relationships it can. Against the invasions of these rights by government officials, acting without authority or under an unconstitutional statute, the I. W. O. is protected by the First, Fifth, Ninth and Tenth Amendments. *Bell* v. *Hood*, 527 U. S. 678, 684; *Land* v. *Dollar*, 330 U. S. 730; *Larsen* v. *Foreign and Domestic Commerce Corp.*, 337 U. S. 682; *Philadelphia Company* v. *Stimson*, 223 U. S. 605.

So much is conceded in the majority opinion of the Court below:

> "* * * I. W. O. is a business corporation with income from insurance premiums which it says has been impaired by the action of the appellees. It has, therefore, a property right, which is legally protected, as it claims * * *" (R. 67).

The majority, however, held that this property right had not been *directly* affected by the Attorney General's action under the Executive Order, and, therefore, I. W. O. was without standing to sue.

This, in essence, is the Government's case (Government Brief in *Joint Anti-Fascist* case, p. 7). We submit that there is no valid basis in fact or law for it. "Concededly, the Attorney General's designation thus fixes its status (for administrative proceedings with regard to the eligibility for Federal employment of its members) in the sense that designation is not subject to reexamination in par-

ticular loyalty proceedings" (Government Brief in *Joint Anti-Fascist* case, No. 8, p. 28). The Attorney General's designation was made without notice or hearing to the I. W. O. and without affording it any of the conventional procedural safeguards ordinarily required by the due process clause (Government Brief in *Bailey* v. *Richardson*, No. 49, p. 23). And as the majority held in the Court below, no judicial review is open to the I. W. O. to test the correctness of the Attorney General's designation. "If he was mistaken as to the true character of the I. W. O., no court can cause him to change his conclusion" (R. 66).

DEFENDANTS' ABRIDGEMENT AND DENIAL OF PETITIONER'S RIGHTS. Was the I. W. O. directly injured by the Attorney General's designation? Its complaint alleges that solely as a result of defendant's acts, the Insurance Departments in the various states, under whose supervision the I. W. O. operates, have brought proceedings to cancel the charter and licenses necessary to the operation of the I. W. O. under law (R. 17).

It is said that such proceedings are only indirectly the result of the Attorney General's designation, which is merely advice to the executive departments and agencies and were not undertaken by those insurance departments pursuant to the Executive Order (R. 68, 66. See also Government Brief *Joint Anti-Fascist* case No. 8, p. 26).

The Government, however, in the plainest terms, has negated the position that the designation was merely advice to the executive departments and agencies to the President and has made it clear beyond cavil that the designation was the President's advice to the nation concerning the evil character of the designated organizations, including the I. W. O. Thus, in its Brief in the *Joint Anti-Fascist* case, No. 8, the Government says:

> "It is the President's duty and his right to inform *the people* of those *groups whose activities are in his judgment inimical to the public welfare*. His duty to inform the *nation* is particularly compelling *which, as here, organizations are, in his* opinion, engaging in

activities that constitute a *threat to our form of government.* * * * In exercising his broad power to inform the *Nation* of *potential threats to its existence*, the President is immune from judicial restraint. * * * We think it plain that the President has *this* power to *designate those who, in his judgment, are hostile to the national welfare* and equally plain that he may exercise it through the head of an executive department" (pp. 42-44, italics supplied).

The Government is here discussing, not a speech by the President or the Attorney General, but a permanent systematic regulation of Government employment embodied in law, in the course of which, the Attorney General has, purportedly in accordance with law, designated the I. W. O., without notice or hearing and contrary to fact, as a "threat to our form of government inimical to the public welfare, hostile to the national welfare, subversive, disloyal, communist."

The Attorney General's designation, thus, was not intended for the ears of the President or executive departments and agencies alone, as the Government elsewhere in its brief disingenuously asserts (Government Brief, *Joint Anti-Fascist* case, p. 32). It was intended for the nation, including the law enforcement officers and the Commissioners of Insurance in the various states (R. 17).

The peculiar sensitivity of insurance companies to rumor and the public interest in the proper protection of their operations and financial condition have long been recognized in the insurance laws of the various states. Sections 3, 16 and 29-31 of the Insurance Law of New York provide detailed requirements for the annual and other examinations of the condition of insurance companies, and prohibit the public release of adverse information until lengthy procedures have been followed, to assure the accuracy of the conclusions reached. The I. W. O., thus, by the very nature of the insurance business in which it is engaged, is in profound need of legal protection against the very type of official activity which is complained of here. See Patterson, *The*

Insurance Commissioner in the United States (Harvard University Press, 1927) p. 416.

The I. W. O.'s complaint alleges further that as a result of the Attorney General's listing, it has lost and will lose members, especially present and prospective civil servants and employees in private plants holding Army and Navy contracts and that its members in the Government service have been subjected to charges of disloyalty and dismissal because of their membership in the Order, in dismissal proceedings where the Attorney General's designation of the I. W. O. is a binding determination of its status, not subject to review, to the irreparable injury of the I. W. O. (R. 16-18).

The lifeblood of a membership organization is its membership. If, as a direct result of the Attorney General's designation, the membership of the I. W. O. who are present or prospective federal employees or who are employed in private plants holding Government contracts terminate their membership in the I. W. O., because they are unwilling to take the risk of dismissal from federal employment, they are only doing what the Attorney General's designation is reasonably calculated to have them do.

It is, of course, immaterial that the Attorney General's designation was not in the form of a command to the I. W. O. (*La Crosse Tel. Corp.* v. *Wis. L. Rel. Bd.*, supra; *Columbia Broadcasting System* v. *U. S.*, supra.) or that it operated on federal employee members of the I. W. O. rather than on the I. W. O. itself, or that it is described as "advice" to the Loyalty Review Boards, which may or may not be controlling as to the character of the employee involved (Government Brief, *Bailey* v. *Richardson*, No. 149, p. 138).

The Attorney General's designation was not an abstract determination of status; nor merely an interim adjudication in an uncompleted administrative process. It was unquestionably a final binding defamatory determination of status in a permanent governmental regulatory scheme arrived at without notice or hearing and not subject, within

the statutory scheme, to any modification by evidence or review by the Courts. It told the present or prospective member of the I. W. O. in federal employment that he could not become or remain a member of the I. W. O. without running the risk himself of being designated as subversive and disloyal and thus of being discharged, with that stigma. Such a status-fixing designation here is no less subject to judicial review, at the suit of the I. W. O., than the certification of the Wisconsin Labor Relations Board of the prevailing union, at the suit of the employer and the losing union in the *La Crosse Telephone Corp.*, case supra. *Truax* v. *Raich*, 239 U. S. 33; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *CBS* v. *U. S.*, supra; *Stark* v. *Wickard*, supra.

The designation is no more (and no less) controlling than the general policy with respect to option time, embodied in the F. C. C. regulations, affecting licenses. These regulations were held subject to judicial review in the *Columbia Broadcasting* case, *supra*, at the suit of the network. In that case the regulations were for the benefit of the Commission, and subject to alteration and amendment, in cases involving applications or renewals, which the Commission could adjudicate on the merits in each case. (See *F. T. C.* v. *Cement Institute*, 333 U. S. 613 at 701, "The fact that the Commission had entertained such views as the result of its prior ex parte investigations did not mean that the minds of its members were irrevocably closed on the subject of the respondent's basing point practices.")

In the light of the realities of today, it is the sheerest sophistry for the Government to assert, as it does in its Reply Brief, pp. 11-12, that the Attorney General's designation in no way compels anyone to withdraw from I. W. O. or to cancel his insurance, and that "voluntary" resignations are not a legal consequence of the designation. Such resignations are no more "voluntary" than resignations of employees from unions, when the employer uses his eco-

nomic power to coerce employees by threat of discharge from employment.*

The justiciability of the present controversy is emphasized by the fact that the action complained of invades the rights of petitioner and its members under the First Amendment. This amendment protects against official acts which "abridge" freedom of speech, press and assembly. The word "abridge" obviously includes not only direct restraints but indirect ones as well. *American Communications Association* v. *Douds*, 339 U. S. 392. Moreover, the purpose of the amendment would be frustrated if fine spun refinements were permitted to shelter executive action from prompt judicial redress. See *Perkins* v. *Elg*, 307 U. S. 325. It has long been recognized that the individual must be afforded prompt access to the courts to remove a possible restraint upon rights protected by the First Amendment even though such restraint takes the form of a mere threat. *Thornhill* v. *Alabama*, 310 U. S. 88; Note, 61 Harv. L. R. (1948) 1208.

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* The Government makes the point in its Reply Brief (pp. 8-10) that the Attorney General's designation of the I. W. O. is binding only in loyalty proceedings, not in naturalization proceedings, and that it is open to the I. W. O. or the alien to meet the accusation in the naturalization proceedings. It cites two cases in which the question of proving the character of the I. W. O. was open to the petitioner who, in each case, finally withdrew his petition without meeting the accusation. As to whether the Attorney General's designation is binding administratively in cases involving suspension of deportation, see *United States ex rel. Kaloudis* v. *Shaughnessy*, 180 F. 2d 489, where suspension was administratively denied on the basis of the Attorney General's designation of the I. W. O. and the denial was upheld by the Court. The mere fact that the aliens who petitioned for naturalization in the two cases cited by the Government ultimately withdrew their petitions does not, of course, establish anything as to the I. W. O.

2. Arthur Lowndes Drayton

As to Petitioner Drayton, the proper question before this Court is whether on this record he should be permitted to intervene, on the basis of his motion so to do and the supplemental and amended complaint which petition filed with his motion (R. 32, 33). For the reasons which are set forth in Judge Edgerton's dissent (R. 69), we submit it was clearly an abuse of discretion by the District Court to have denied his motion.

The Government, however, has sought to inject a different question by claiming that the case as to Drayton is moot, since Drayton was cleared of charges of disloyalty and restored to federal employment subsequent to the action of the Court (Government Brief, pp. 2, 12-13). The Government also notes that one Evelyn Bornstein had moved to intervene in this cause in the District Court, prior to Drayton's motion to intervene, but subsequently withdrew her motion, after the charges against her had been dismissed by the War Assets Administration.

As to Bornstein, the facts are that after the charges of disloyalty had been lodged against her, but before they had been heard, her position with the War Assets Administration was liquidated, she was no longer a federal employee, and the charges against her were not dismissed on the merits but because the case had become moot.

As for Drayton, it is submitted that in accordance with familiar principles, where the control of employment of petitioner is in the opposing party, who exercise it *pendente lite* to affect the litigation in his favor, no weight should be attached to the present reinstatement of Drayton for the purpose of determining his rights and giving him the relief which he requests in his supplemental and amended complaint. Drayton's reinstatement is not *res adjudicata*. The charges against him may be reopened at any time, and he may be put anew to the proof on the issue of his membership in the I. W. O. Indeed, the recent public history

of such government employees as John Service and Michael Lee indicates that loyalty charges are subject to repeated reopenings, that clearance at one time is no assurance of clearance at any other, and, indeed, that to have been cleared, at all, after charges, may be itself sufficient warrant for the reopening of the case. In any event, the relief which Drayton requests is not his reinstatement, and his reinstatement should not foreclose his right to the relief which he does request. He seeks, as a member of the I. W. O., the same relief which the I. W. O. seeks for itself, and he further seeks for himself not to have proceedings against him on charges of disloyalty under procedures which he alleges violate his constitutional rights (R. 53-57). Reinstatement now, not being *res adjudicata*, will not give him the relief which he seeks, should the charges against him be reopened. As a member of the I. W. O. and as a government employee, subject to the Executive Order, he asserts interests and claims which his present reinstatement neither determines nor renders moot.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the judgment of the Court below should be reversed.

Respectfully submitted,

ALLAN R. ROSENBERG,
Attorney for Petitioners.

October 13, 1950.

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No. 71

In the Supreme Court of the United States

OCTOBER TERM, 1950

INTERNATIONAL WORKERS ORDER, INC. AND ARTHUR LOWNDES DRAYTON, PETITIONERS

v.

J. HOWARD MCGRATH, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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MEMORANDUM FOR THE UNITED STATES

This is the third in a series of cases filed last Term raising the same question with regard to the constitutionality of Executive Order 9835, 12 F. R. 1935, and Section 9A of the Hatch Act, 53 Stat. 1148, 5 U. S. C. Supp. II, 118j, as applied by Executive Order 9835. The petitions for writs of certiorari in the earlier cases were granted. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, No. 8, this Term, certiorari granted on March 13, 1950; *National Council of American-Soviet Friendship, Inc.* v. *McGrath*, No. 7, this Term, certiorari granted on May 15, 1950. The

question involved in the instant case is, therefore, already before the Court. Moreover, the opinion of the court below rests on its decision in the *Joint Anti-Fascist Refugee Committee* case. Accordingly, the Court may deem it advisable to withhold action on the instant petition until the *Joint Anti-Fascist Refugee Committee* and the *National Council of American Soviet Friendship, Inc.* cases are decided, at which time final disposition could be made of the present case. See *e. g., Denham* v. *Munson Line,* 312 U. S. 650, held pending decision in *Reconstruction Finance Corporation* v. *Prudence Group,* 311 U. S. 579.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

JUNE 1950.

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BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the District Court for the District of Columbia (R. 58) is reported at 88 F. Supp. 873. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 63–69) is reported at 182 F. 2d 368.

JURISDICTION

The judgment of the Court of Appeals was entered on March 22, 1950 (R. 70). The petition for a writ of certiorari was filed on May 11,

1950, and was granted on October 9, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner International Workers Order, Inc. has any legal standing or right to challenge a designation, made by the Attorney General pursuant to instructions issued by the President under Executive Order 9835, that petitioner International Workers Order, Inc., is a Communist organization.

2. Whether the motion for leave to intervene filed by petitioner Drayton in the District Court is now moot because Drayton has been cleared of charges of disloyalty by the Loyalty Review Board and has been restored to his position in the Government service.

STATUTE AND EXECUTIVE ORDER INVOLVED

Section 9A of the Hatch Act, 53 Stat. 1147, 1148, 5 U. S. C., Supp. II, 118j, and Executive Order 9835, 12 F. R. 1935, are set forth in the Appendix to the Brief for Respondents in *Bailey* v. *Richardson*, No. 49, this Term.

STATEMENT

This action was brought by petitioner International Workers Order, Inc. (IWO) to challenge its designation by the Attorney General, for the purposes of the Federal Government's loyalty program, as a Communist organization. The

designation of organizations and the publication thereof pursuant to Executive Order 9835 are fully described at pp. 14–24 of the Brief for Respondents in *Bailey* v. *Richardson*, No. 49, this Term, and pp. 3–4, of the Brief for Respondents in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, No. 8, this Term.

IWO alleges that it has suffered "serious and irreparable loss and damage" as the result of the above described designation and that the actions of respondents have deprived it of "rights, privileges and immunities secured under the Constitution and laws of the United States, including Article III and Amendments I, V, IX, and X, of the Constitution." (R. 2–3, 21). Specifically the injuries alleged are these: IWO, an avowed fraternal benefit society (R. 4–10), has lost and will lose, members, especially present and prospective civil servants;[1] subordinate bodies of IWO have been denied meeting places; the Commissioner of Internal Revenue has revoked the tax exempt status of IWO and certain of its affiliates;[2] State

[1] The complaint contains no allegation as to the number or proportion of IWO's membership which consists of Federal employees, or of the extent of the claimed injury attributable to the alleged dropping out of Federal employees.

[2] The complaint alleges that IWO was deprived of its tax exempt status on February 4, 1948 (R. 16), but petitioner's Exhibit G (R. 31–32) shows that such action was taken on February 27, 1947, nine months before it was designated a Communist organization by the Attorney General on November 24, 1947 (R. 15).

officials have instituted investigations and proceedings to rescind the various charters, licenses and franchises possessed by IWO; private employers having Government contracts have discharged members of IWO at the behest of the contracting Government agencies; members have been denied naturalization or have had their petitions for naturalization held in abeyance because of their membership; and members who are Federal employees have been subjected to charges of disloyalty and to dismissal because of their membership. In short, "the Order and its members * * * have suffered and will continue to suffer public shame, disgrace, ridicule and obloquy, and economic coercion and injury." (R. 16–18).

Accordingly, IWO prays that respondents, the Attorney General and the chairman and members of the Loyalty Review Board of the Civil Service Commission, be enjoined from designating and publicizing the name of IWO as a Communist organization, and that respondents be directed to remove the name of IWO from the list of designated organizations, to make a public statement of this removal, and to take no action based on the inclusion of IWO in the list of designated organizations. Further, IWO prays for a declaratory judgment that Section 9A of the Hatch Act, as construed and applied by Executive Order 9835 and by respondents, and Executive Order

9835, on its face and as construed and applied by respondents, are unconstitutional.

After the present proceedings were instituted, petitioner Drayton, a Post Office employee who is a member of IWO (R. 53), filed a motion, pursuant to Rules 20 and 24 (b) of the Federal Rules of Civil Procedure, for leave to intervene as plaintiff and to join as defendants the chairman and members of the Loyalty Board of the Post Office Department (R. 32). In his proposed complaint, Drayton alleges that the Loyalty Board of the Post Office Department has "instituted proceedings against plaintiff to procure his dismissal from the federal civil service because of 'disloyalty' evidenced by his membership in the Order;" [3] that in such proceedings the designation of IWO by the Attorney General will be binding on the Loyalty Board and that "plaintiff's dismissal is inevitable;" that such dismissal from the Federal Government would result in his disqualification from private employment; and that respondents have impaired the value of the benefits enjoyed by plaintiff from his membership in

[3] The dissenting opinion in the court below states (R. 69):

> After this appeal was argued, and in response to an inquiry from the bench during the argument of *Washington et al.* v. *McGrath*, No. 10413, the Department of Justice informed us that a finding of "reasonable grounds for belief" that Drayton is disloyal has been made by the Post Office Department Loyalty Board and affirmed by the Postmaster General.

IWO and threaten to destroy them entirely (R. 54–55).

Accordingly, Drayton, in his proposed complaint, joins in the prayers for relief requested by IWO (*supra*, pp. 4–5) and further prays that respondents be enjoined from dismissing plaintiff from his Federal employment because of his membership in IWO (R. 56).

Respondents moved to dismiss the complaint (R. 57) and to deny the motion for intervention (R. 57). Following a hearing, the District Court granted both motions (R. 60). The Court of Appeals affirmed, one judge dissenting (R. 70). As to IWO, the court below held that the differences between IWO and the Joint Anti-Fascist Refugee Committee "do not distinguish the two cases" and accordingly, that, for the reasons set forth in its opinion in the *Joint Anti-Fascist Refugee Committee* case,* IWO has no standing to maintain this action (R. 67). Turning to Drayton's appeal, the court below held that (1) the denial of permissive intervention by the District Court was not an abuse of discretion and, therefore, not reversible error, and (2) the order denying leave to intervene was not a final order and thus not appealable since it did not bar him from instituting an original action of his own (R. 68).

Subsequent to the judgment of the Court of Appeals, the Loyalty Review Board reversed the

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* *Joint Anti-Fascist Refugee Committee* v. *Clark*, 177 F. 2d 79 (C. A. D. C.).

finding of the Loyalty Board of the Post Office Department that reasonable grounds exist for belief that Drayton is disloyal. Drayton was restored to the rolls of the Post Office Department on July 19, 1950, and returned to duty on July 21, 1950 (Appendix, *infra*, p. 14).

ARGUMENT

The instant case, decided on the authority of *Joint Anti-Fascist Refugee Committee* v. *Clark*, 177 F. 2d 79 (C. A. D. C.), presents the same issues raised by petitioner in that case and advances the same major arguments. See No. 8, this Term, *sub nom. Joint Anti-Fascist Refugee Committee* v. *McGrath*. The Brief for Respondents in the *Joint Anti-Fascist* case develops the reasons and authorities which, we submit, establish the correctness of the decision below. In addition, the Brief for Respondents in *Bailey* v. *Richardson*, No. 49, this Term, demonstrates the occasion for, and the validity of, Executive Order 9835. Accordingly, we need here advert only to certain additional issues not present in those cases.

1. *The International Workers Order, Inc.*— In an effort to show that the designation of IWO by the Attorney General as a Communist organization definitively fixes its status so as to subject its members unconditionally to legal consequences, the complaint alleges that "Members of the Order who have pending petitions for naturalization

have been denied naturalization or have had their petitions held in abeyance because of their membership in the Order solely because the Department of Justice, headed by defendant Clark regards the designation as conclusive, final and not subject to re-opening or hearing in such proceedings." (R. 17–18.) This assertion is completely misleading and only partly true.

It is true that petitions for naturalization filed by members of organizations designated by the Attorney General as Communist have been held up by the Immigration and Naturalization Service. But such petitions have been held in abeyance solely for the purpose of enabling the Immigration and Naturalization Service, whose examiners conduct preliminary hearings for the naturalization court pursuant to Section 333 of the Act of October 14, 1940, 54 Stat. 1137, 8 U. S. C. 733, to conduct its own investigation of whether such organizations fall within the classification of Section 305 of the Act, 8 U. S. C. 705. The Attorney General's list serves only as a source of reference in determining which organizations are to be investigated.[5] Moreover, it is untrue that such peti-

[5] This is clearly demonstrated by examination of Section 305, 8 U. S. C. 705. In pertinent part, that section provides that:

"No person shall hereafter be naturalized as a citizen of the United States—

"(a) Who advises, advocates, or teaches, or who is a member of or affiliated with any organization, association,

fiqners for naturalization have no opportunity to challenge the correctness of a determination that a particular organization comes within the scope of Section 305. Naturalization proceedings are judicial proceedings, not administrative, and the ultimate decision as to the character of the

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society, or group that advises, advocates, or teaches opposition to all organized government; or

"(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

"(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

"(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, because of his or their official character; or

"(3) the unlawful damage, injury, or destruction of property; or

"(4) sabotage.

"(c) Who writes, publishes, or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, distribution, publication, or display any written or printed matter advising, advocating, or teaching opposition to all organized government, or advising, advocating, or teaching—

"(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

"(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of

organization is for the naturalization court. By statute, exclusive jurisdiction is vested in the District Courts of the United States and State courts of record having jurisdiction in actions at law and/or equity in which the amount in controversy is unlimited (Section 301, 8 U. S. C. 701). The proceedings are subject to all the rules governing judicial proceedings (Sections 333, 334, 8 U. S. C. 733, 734). Cf. *Tutun* v. *United States*, 270 U. S. 568, 576–578. In this connection, it should be noted that members of IWO have been afforded the opportunity to test, in court, the character of IWO. See

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specific individuals or of officers generally) of the Government of the United States or of any other organized government; or

"(3) the unlawful damage, injury, or destruction of property; or

"(4) sabotage.

"(d) Who is a member of or affiliated with any organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (c)."

Organizations falling within the purview of that section have been designated by the Attorney General as "organizations which 'seek to alter the form of government of the United States by unconstitutional means,'" and IWO is not thus designated. (See Appendix to Brief for Respondents in No. 49, this Term. p. 145.)

Stasiukevich v. *Nicolls*, 168 F. 2d 474 (C. A. 1).[6] We submit, therefore, that this allegation contained in IWO's complaint can, in no way, support IWO's contention that the Attorney General's designation of it as a Communist organization fixes its status so as to give it standing to sue. Indeed, the remedy in the naturalization court is an adequate one which makes relief in equity unnecessary.

IWO further asserts that, as a fraternal organization, it provides insurance for its members and that resignations or withdrawals from membership as a result of the Attorney General's designation of the organization as Communist will reduce the payments to IWO for insurance purposes. Clearly, the Attorney General's designation in no way compels anyone to withdraw from IWO or to cancel his insurance (see Brief

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[6] In that case, the District Court for the District of Massachusetts had denied petitioner's petition for naturalization, holding that petitioner "has not sustained the burden of proving his attachment" to the principles of the Constitution (*id.* at 476). On appeal, the case was remanded because, in part, the District Court had failed to make any finding of fact as to the character of IWO, of which petitioner was a member. On remand, petitioner withdrew his petition. In a similar case involving IWO, *In re Krishna Chandra*, Naturalization No. 3934 in the District Court for the Northern District of California, petitioner withdrew his petition after the Government had presented part of its case in a hearing held on October 28, 1949, before J. Lemmon.

for Respondents in No. 8, this Term, pp. 28–30). The fact that members may resign voluntarily, as they have a perfect right to do, and thus cease to pay dues which include insurance premiums, is no more a legal consequence of the Attorney General's finding than the fact that persons may have been discouraged from donating funds to the organizations involved in Nos. 7 and 8, this Term.[7]

2. *Arthur Lowndes Drayton.*—Although we believe the reasoning of the court below in affirming the denial of Drayton's motion for leave to intervene (R. 68) is unassailable, it is unnecessary for this Court to pass upon that motion. As revealed by the letter of the Chairman of the Loyalty Review Board (Appendix, *infra,* p. 14), Drayton was notified by letter dated June 29, 1950, that the Loyalty Review Board has reversed the finding of the Loyalty Board of the Post Office Department that reasonable grounds exist for belief that he is disloyal. And on July 19, 1950, Drayton was restored to his position in the Government service. Accordingly, Drayton has no standing to challenge the Attorney

[7] Petitioner alleges that its relationship with its members is contractual in nature. But it is not alleged that the resignation of members, which brings with it a cancellation of the insurance policy, is a violation of any contract. In the absence of any such allegation, it is to be assumed that the members have a right to resign at will.

General's designation of IWO, and his proposed complaint is moot.*

CONCLUSION

For the reasons set forth above and in the Briefs for Respondents in the *Joint Anti-Fascist* and *Bailey* cases (Nos. 8 and 49, this Term), it is respectfully submitted that the judgment of the court below should be affirmed.

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Assistant Attorney General.

JAMES L. MORRISSON,
SAMUEL D. SLADE,
BENJAMIN FORMAN,
Attorneys.

OCTOBER 1950.

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* In this connection, we think it pertinent to note that a similar motion for leave to intervene in the District Court was filed by one Evelyn Bornstein, a member of IWO and an employee of the War Assets Administration, prior to Drayton's motion, and was withdrawn after the charges against her had been dismissed by the War Assets Administrator.

APPENDIX

UNITED STATES
CIVIL SERVICE COMMISSION,
Washington 25, D. C., October 4, 1950.

Honorable PHILIP B. PERLMAN,
Solicitor General, Washington, D. C.

DEAR MR. PERLMAN: In reply to your request concerning the case of Arthur Lowndes Drayton who filed a motion for leave to intervene in the case of International Workers Order versus McGrath, you are advised that Mr. Drayton appealed to the Loyalty Review Board from the adverse decision of the Postmaster General. A panel of the Loyalty Review Board considered the entire record, concluded that reasonable grounds did not exist to believe that Mr. Drayton is disloyal to the Government of the United States, and reversed the finding of the Postmaster General.

Mr. Drayton was notified of this decision by letter from the Loyalty Review Board dated June 29, 1950, and the Post Office Department has advised that Mr. Drayton was restored to the Post Office rolls on July 19, 1950 and he returned to duty on July 21, 1950.

Yours truly,

SETH W. RICHARDSON,
Chairman, Loyalty Review Board.

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No. 71

In the Supreme Court of the United States

OCTOBER TERM, 1950

INTERNATIONAL WORKERS ORDER, INC. AND ARTHUR LOWNDES DRAYTON, PETITIONERS

v.

J. HOWARD MCGRATH, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 71

INTERNATIONAL WORKERS ORDER, INC. AND ARTHUR LOWNDES DRAYTON, PETITIONERS

v.

J. HOWARD MCGRATH, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

This memorandum is addressed to a "Motion to Take Judicial Notice" recently filed by petitioners. That motion refers to certain proceedings had in a state court in New York, and to a statement made by a Special Assistant to the Attorney General in the course of those proceedings. The respondent has no objection to this Court's taking judicial notice of the matters set forth if this Court should deem those matters relevant to any issue now before it for decision. In the event that this Court should consider those matters, we

believe that it should be informed more fully of the nature and extent of the so-called "intervention" (Motion, p. 2) of the United States in the state court proceedings.

A number of communications have been received by the Department from state authorities with respect to possible action by the states involving organizations designated on the Attorney General's list. It has been, and continues to be, the policy of the Department that, while it may as a matter of comity make available to state authorities information whose disclosure the national interest permits, the designation of an organization by the Attorney General is made solely for purposes of the Loyalty Program, and that the question of what proceedings, if any, a state should take with respect to any organization subject to its jurisdiction is a matter of state policy.

This policy was adhered to in connection with the New York proceedings to which petitioners refer. Sometime ago officers of the State of New York inquired of the Department of Justice whether it had evidence bearing on the eligibility of petitioner International Workers Order, Inc. to continue to function as an insurance organization under New York law. In response to that inquiry, the Department indicated that it would be glad to cooperate with the state authorities to the extent indicated above. Thereafter proceedings were brought by a state officer for relief under state law. The United States is not a

party to those proceedings and the representative of the Department of Justice was authorized to be present only as an observer and not as a participant. Should any question arise therein as to the significance, if any, to the state proceedings of the Attorney General's designation of petitioner as a subversive organization, or the weight to be given that designation, it would present a matter for the state court to determine.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

JANUARY 1951.

U. S. GOVERNMENT PRINTING OFFICE: 1951

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OCTOBER TERM, 1950

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INTERNATIONAL WORKERS ORDER and ARTHUR LOWNDES DRAYTON,

Petitioners,

v.

J. HOWARD MCGRATH, Individually and as Attorney General of the United States et al,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION TO TAKE JUDICIAL NOTICE

ALLAN R. ROSENBERG,
Attorney for Petitioners,
Office and Post Office Address,
1741 K Street, N. W.,
Washington, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 71

INTERNATIONAL WORKERS ORDER and ARTHUR LOWNDES DRAYTON,

Petitioners,

v.

J. HOWARD MCGRATH, Individually and as Attorney General of the United States et al.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION TO TAKE JUDICIAL NOTICE

Petitioners herein respectfully move this Court to take judicial notice of the attached transcript of a proceeding in the Supreme Court of the State of New York, New York County, Special Term, Part I, entitled, "In the matter of the Application of the People of the State of New York by ALFRED J. BOHLINGER, Superintendent of Insurance of the State of New York, for an order directing him to take possession of the property and to liquidate the business, and dissolving the corporate existence, of the INTERNATIONAL WORKERS ORDER, INC.", Motion No. 165, December 18th, 1950. A certified copy of the transcript of the argument before the New York Court on December 18th, 1950 is attached herein as Exhibit A.

Petitioners respectfully call the attention of the Court to the following statement of the representative of the United States Attorney for the Southern District of New York and the Attorney General of the United States:

> "If Your Honor pleases, I am appearing here as a Special Assistant Attorney General, and as a representative of the Attorney General I merely wish to state that the Department of Justice is cooperating with the Attorney General of the State of New York in this proceeding, and also to state that this organization is on the Attorney General's list as a subversive organization—that is the purpose of my appearance here—and that the Department of Justice will continue to cooperate with Mr. Williams and the Attorney General's office" (pp. 3, 4; Exhibit A attached hereto).

Petitioners move this Court to take judicial notice of the attached transcript insofar as it reports the intervention of the Attorney General of the United States upon the basis of the Attorney General's list of subversive organizations in a state court proceeding seeking liquidation of petitioners, INTERNATIONAL WORKERS ORDER, INC.

Respectfully submitted,

ALLAN R. ROSENBERG,
Attorney for Petitioners,
Office and Post Office Address,
1741 K Street, N. W.,
Washington, D. C.

December 21, 1950.

EXHIBIT A

SUPREME COURT,

NEW YORK COUNTY,

SPECIAL TERM—PART I.

IN RE PEOPLE &C (BOHLINGER) INTERNATIONAL WORKERS ORDER, INC.	Motion No. 165

Room, 300, New York County Courthouse,
Monday, December 18th, 1950.

Present:

HON. HENRY CLAY GREENBERG, *J. S. C.*

APPEARANCES:

PAUL W. WILLIAMS, ESQ., Special Counsel and Special Assistant Attorney General, for the Insurance Department of the State of New York.

RAFAEL H. WEISSMAN, ESQ., Appearing Specially for Respondent.

FRANK DONNER, ESQ., of Counsel.

(After discussion upon the call of the calendar:)

The Court: We will mark this matter submitted, and the opposition to the application will be given until January 8th to submit all papers——

Mr. Weissman: No, Your Honor, I can't submit this; I object to the jurisdiction of this Court. As one of the bases I must prepare a motion to that effect. I want to get a chance to look at these papers. As a matter of fact, on the face of the paper—the order to show cause—Your Honor had no power to make the order.

The Court: If you will only give me a chance to finish, you might not disapprove.

Mr. Weissman: I don't want any submission because I am not appearing in the motion at the moment.

The Court: The motion will be marked "submitted," and the opposition will be given until January 8th to submit any papers which they desire to submit, without prejudice to any of the parties involved and without any appearances as such which would be calculated to give the Court jurisdiction in the premises.

Mr. Weissman: But it is understood that on the adjourned date January 8th, I will have the same freedom of action with respect to the application that I would have had this morning?

The Court: That is right.

Mr. Weissman: Thank you.

The Court: That is agreed to. Is that agreeable to you, Mr. Williams?

Mr. Williams: Yes, Your Honor, that is agreeable to me. Your Honor understands I appear here as Special Counsel for the Insurance Department of the State of New York, as Special Assistant Attorney General, and I am associated here with Mr. Donegan, who is a representative of Mr. Irving Saypol, the United States Attorney, and of the Attorney General of the United States. Since question has been raised as to why he is here, I think Your Honor might ask why he is here.

Mr. Weissman: Do I understand that the other gentlemen are also attorneys of record here with you?

Mr. Williams: Well, they are present. I think Your Honor might inquire.

The Court: Do you have anything to say, Mr. Donegan?

Mr. Donegan: Yes. If Your Honor pleases, I am appearing here as a Special Assistant Attorney General, and as a representative of the Attorney General I merely wish to state that the Department of Justice is co-operating with the Attorney General of the State of New York in this proceeding, and also to state that this organization is on the Attorney General's list as a subversive organization—that is the purpose of my appearance here—and that the Department of Justice will continue to co-operate with Mr. Williams and the Attorney General's office.

Mr. Weissman: This is the most extraordinary thing that ever happened in my life.

Mr. Williams: Now, Your Honor, could we have appearances noted, because there are representatives of other states, too?

The Court: Give your name for the record.

Mr. Weissman: Rafael H. Weissman and Frank Donner, attorneys for the International Workers' Order.

The Court: Are there any others?

Mr. Williams: I do not think that I stated my name, although Your Honor may know me. My name is Paul W. Williams, Special Assistant Attorney General of the State of New York.

The Court: Are there any other appearances, gentlemen?

Mr. Williams: Let me introduce my assistant, Mr. Arthur Amiel, who is associated with me, and Mr. James Henry. They are on my staff. Now, there are other attorneys present, and suppose they step up.

Mr. Weissman: May I, Your Honor, be clear on this, since we are making a record? Are the other gentlemen appearing in this proceeding as representing any parties to this?

The Court: Yes; I understand Mr. Donegan to say he represents the United States Government as a Special Assistant——

Mr. Weissman: Your Honor, I object to that. There is nothing in these proceedings to show that he has any standing here. I don't want to be bothered with him.

The Court: It may well be, but I can't prejudge that, Mr. Weissman.

Mr. Weissman: But you can look at the face of the papers, Your Honor. This is an application by the Superintendent of Insurance, and under the statute the Superintendent of Insurance must present an application, "the Attorney General representing him,"—nobody else in the world.

The Court: I understand.

Mr. Weissman: Am I to be bothered with serving papers on them? I object to any appearance by anybody else. If Your Honor, for your own records, wants to indicate that important people are here, I have no objection, but I will not consider that an appearance.

Mr. Williams: Your Honor, there is nothing prejudicial to the respondents in having appearances noted, nor is this time for argument as to why they are here.

The Court: What do you wish to say?

Mr. Kinsek(?): Your Honor, my name is Robert L. Kinsek, Deputy Attorney General of Pennsylvania. I am here in behalf of the Attorney General of Pennsylvania and wish to state that we also are co-operating with Mr. Williams in this case and assisting wherever possible.

The Court: Yes, sir. Do you have an appearance?

Mr. Foley: Your Honor, I am from Shearman, Sterling & Wright's office, representing the National City Bank.

The Court: All right.

Mr. Williams: They were served with a copy of the order to show cause and the stay. Your Honor understands that the stay enjoins the International Workers' Order from the solicitation of new members, from the underwriting of new insurance, and from the disbursing of any funds or the disposition of any assets, except under the joint control of the Superintendent of Insurance of the State of New York.

I am prepared to defend that stay and ask for its continuance if the issue were raised, but Mr. Weissman has not raised it.

The Court: Are there any other appearances, gentlemen?

(There was no response.)

Mr. Weissman: Then, Your Honor, we will be free to apply from time to time to Your Honor as the presiding judge in this matter?

The Court: Yes; that is right.

Mr. Weissman: In connection with the stay and on the return date?

The Court: That is right.

Mr. Weissman: Thank you.

This is to certify that I have compared the foregoing transcript of minutes with my original stenographic notes and that the same is a true and accurate report of the proceedings therein recorded which were had at Supreme Court, New York County, on Monday, December 18th, 1950, in the above-entitled matter.

Dated New York, N. Y.,
December 21st, 1950.

ALFRED J. PRICE,
Official Stenographer, New York
Supreme Court, Special Term,
Part I, New York County.